SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 413.

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners

v.

CHARLES S. BRESLER,

Respondent

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

INDEX

Chronological List of Relevant Docket Entries ..... (iv)

Plaintiff's Amended Declaration, Filed November 7, 1966 1

Plea and Answer of Defendant Greenbelt Cooperative Publishing Association, Inc., Filed September 26, 1966 4

Plea and Answer of Defendant Alfred M. Skolnik, Filed November 21, 1966 7

Defendants' Request to Charge No. 3 8

Defendants' Request to Charge No. 4 8

Defendants' Request to Charge No. 5 9

Motion for Judgment N.O.V. or For New Trial 9

Docket Entries: Denial of Defendants' Motion N.O.V. or For New Trial; Judgment Absolute Entered in Favor of Plaintiff 15

Stipulations of Fact 15

Transcript of Proceedings Before Circuit Court for Prince George's County, Maryland:

Testimony of Alfred M. Skolnik, Witness on Behalf of Plaintiff:

Direct Examination 20

Testimony of Charles Bresler, Witness on Behalf of Plaintiff:

Direct Examination 89
Cross Examination 95

Denial of Defendants' Motion for Directed Verdict 116

Testimony of Edgar L. Smith, Witness on Behalf of Defendant:

Direct Examination 119
Cross Examination 123
Redirect Examination 133

Testimony of Lewis Bernstein, Witness on Behalf of Defendant:

Direct Examination 134
Cross Examination 139

Testimony of Mary Louise Miller Williamson, Witness on Behalf of Defendant:

Direct Examination 147
Cross Examination 151
Redirect Examination 155

Testimony of Dorothy Sucher, Witness on Behalf of Defendant:

Direct Examination 156
Cross Examination 163
Redirect Examination 169

Testimony of Elaine Skolnik, Witness on Behalf of Defendant:

Direct Examination 169
Cross Examination 175

Court's Instructions to the Jury 188

Exhibits Before Circuit Court:

Plaintiff's Exhibit 1 211
Plaintiff's Exhibit 2 216
Plaintiff's Exhibit 3 220
Plaintiff's Exhibit 4 221
Plaintiff's Exhibit 5 222
Plaintiff's Exhibit 6 222
Plaintiff's Exhibit 7 223
Plaintiff's Exhibit 8 226
Plaintiff's Exhibit 11 228
Plaintiff's Exhibit 22 231
Plaintiff's Exhibit 23 232
Plaintiff's Exhibit 24 233
Plaintiff's Exhibit 31 235
Plaintiff's Exhibit 32 238
Plaintiff's Exhibit 33A 240
Plaintiff's Exhibit 33B 241

Defendants' Exhibit 1 242
Defendants' Exhibit 6 245
Defendants' Exhibit 8 247
Defendants' Exhibit 9 249
Defendants' Exhibit 12 251
Defendants' Exhibit 13 253
Defendants' Exhibit 14 254
Defendants' Exhibit 26 255
Defendants' Exhibit 27 256
Defendants' Exhibit 33 257
Defendants' Exhibit 34 258
Defendants' Exhibit 35 259
Defendants' Exhibit 36 260
Defendants' Exhibit 38 262

Order for Appeal by Defendants, Filed February 19, 1969 264

Opinion and Judgment of Court of Appeals of Maryland, Filed May 2, 1969 265

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Circuit Court for Prince George's County, Maryland.

July 18, 1966 – Plaintiff Bresler's original declaration filed in Circuit Court for Prince George's County, Maryland.

Sept. 26, 1966 – Defendant Greenbelt Cooperative Publishing Association, Inc.'s plea and answer filed.

Nov. 7, 1966 – Plaintiff's amended declaration filed with respect to Defendant Skolnik.

Nov. 21, 1966 – Defendant Skolnik's plea and answer to amended declaration filed.

Jan. 3, 1968 – Jury trial of action commenced.

Jan. 9, 1968 – Court's charge to the jury, and verdict of the jury in favor of the plaintiff.

Jan. 24, 1968 – Motion N.O.V. or for new trial denied.

Jan. 24, 1968 – Judgment of Circuit Court entered, awarding plaintiff judgment of the sum of $17,500, plus interest and costs.

Feb. 19, 1968 – Defendants' Order for Appeal filed.

Court of Appeals of Maryland

May 2, 1969 – Opinion and Judgment of the Court of Appeals of Maryland filed.

[Original Declaration Filed July 18, 1966; Amended Declaration Filed November 7, 1966]

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

CHARLES S. BRESLER
Plaintiff

v. Law No. 30,112

GREENBELT COOPERATIVE
PUBLISHING ASSOCIATION, INC.
and
ALFRED M. SKOLNIK
Defendants

AMENDED DECLARATION

Charles S. Bresler, Plaintiff, by Abraham Chasanow, his attorney, sues Greenbelt Cooperative Publishing Association, Inc., a foreign corporation doing business in the State of Maryland, and Alfred M. Skolnik, Defendants.

At the times hereinafter set forth and continuously for several years prior thereto, and continuously to the present time, Plaintiff was and is a builder and developer and part owner of several parcels of land in Greenbelt, Maryland, and elsewhere, and an officer and/or director of corporations which owned and still own and were and still are engaged in building and developing land in Greenbelt, Maryland, and elsewhere, and the Plaintiff, in the capacities aforesaid, was engaged in the sale and rental of land and improvements thereto in Greenbelt, Maryland, and elsewhere.

At the times hereinafter set forth and continuously for several years prior thereto, and continuously up to the present time, the Defendant, Greenbelt Cooperative Publishing Association, Inc., was and still is the publisher of a weekly newspaper known as "Greenbelt News Review" which is published and distributed in the City of Greenbelt, Maryland, and in the State of Maryland and elsewhere, and the Defendant,

Alfred M. Skolnik, was and still is the President of said defendant foreign corporation.

On, to wit, October 14, 1965, said Defendants falsely and with express malice printed and published of and concerning the Plaintiff in said newspaper the words following — that is to say, "It seems that this is a slight case of blackmail," and "I would stand for my children's discomfort, rather than give in to a blackmailing scheme."

On, to wit, October 21, 1965, said Defendants falsely and with express malice printed and published of and concerning the Plaintiff in said newspaper the words following — that is to say, ". . . fight Bresler's 'blackmail'."

Said Defendants falsely and with express malice printed and published of and concerning the Plaintiff in said newspaper with respect to the Plaintiff's participation in said building, development, sales and rentals in said City of Greenbelt, Maryland, the words following — that is to say: On, to wit, October 14, 1965, "In my opinion, it's highly unethical" and "However, we resent the way in which our needs are being exploited cynically by the land developer who owns the property on which the school is scheduled to be built." and "Even if the morality of this situation is overlooked . . ."; and on, to wit, October 21, 1965, "But some of the developers are not satisfied with half a loaf; they want the whole loaf, and in a few instances, do not seem to care what methods are used to achieve their goal." and "Albert Herling suggested skulduggery in the September Court postponement."; and on, to wit, January 20, 1966, "On January 11, 1966, the county board of education and the developer Charles Bresler struck another crippling blow at Greenbelt's Master Plan. Bresler, in flagrant disregard of that plan and the wishes of nearly all Greenbelt citizens, moved to compound even further the serious problems which a senior high school in his land-locked property on parcel 2 would create." and "Must we cannibalize original Greenbelt to spawn

unwieldy, unplanned, and unwanted development, solely for the convenience and profit of the developer?"; and on, to wit, April 7, 1966, "Bresler Repudiates Covenants Signed with the City in 1962"; and on, to wit, May 19, 1966, "I wonder how much is known of his land dealings against this city?"; and on, to wit, June 9, 1966, "Reportedly, a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards," and on, to wit, June 30, 1966, "GHI FILES SUIT AGAINST SCHOOL BOARD: BRESLER INFLUENCE CITED."; and on, to wit, July 7, 1966. "That then is your cue to easy wealth: Be audacious and presumptuous, but as far from here as can be."

That the publications aforesaid were published in said newspaper for the purpose of imputing to the Plaintiff the commission of the crime of blackmail; and for the purpose of exposing the Plaintiff to public scorn, hatred, contempt, disgrace and ridicule; and for the purpose of injuring the Plaintiff in his aforesaid business and occupation; and to degrade Plaintiff in the esteem or opinion of the residents of the City of Greenbelt and the State of Maryland and elsewhere; and to infer and imply that Plaintiff is untrustworthy; and to injure Plaintiff in his credit and financial transactions; and to infer and impute to Plaintiff corrupt or dishonest motives in his dealings with City, County and State officials and others; and to impute to Plaintiff moral turpitude, immoral conduct, dishonesty, fraud and falsehood.

The aforesaid publications were intended to and did injure the Plaintiff as follows: They did injure the Plaintiff in his business and occupation, and did injure Plaintiff in his business reputation and practice, and did injure Plaintiff in his financial credit and transactions, and did expose the Plaintiff to public scorn, hatred, contempt, disgrace and ridicule, and did degrade Plaintiff in the esteem or opin-

ion of the residents of the City of Greenbelt and the State of Maryland and elsewhere.

Said publications were made recklessly and without reasonable justification or excuse, and were printed and published in said newspaper by and with the knowledge and consent of each of said Defendants, and said Defendant, Alfred M. Skolnik, personally directed, supervised, assisted, and actively participated in, and cooperated in, the preparation, writing, editing, printing and publication of, the publications aforesaid.

Plaintiff claims damages of and from each of the said Defendants in the amount of One Million Dollars ($1,000,000.00) as compensatory damages, and One Million Dollars ($1,000,000.00) as exemplary or punitive damages.

/s/ Abraham Chasanow
Attorney for Plaintiff

[Filed Sept. 26, 1966 - Declaration Not Amended as to This Defendant]

PLEA AND ANSWER OF DEFENDANT GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC. TO DECLARATION

Defendant GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., by its undersigned attorneys, says:

I. As its general plea, that it did not commit the wrongs alleged in the declaration.

II. As its further answer to the declaration, defendant more particularly states the following defenses:

First Defense

1. Denies each and every allegation contained in the fourth through the ninth unnumbered paragraphs

of the declaration, except admits that the statements quoted in the declaration appeared in the following articles, editorials and Letters to the Editor published in the Greenbelt News Review on the dates indicated:

(a) On October 14, 1965, an article entitled "School Site Stirs Up Council/Rezoning Deal Offer Debated," a copy of which is annexed hereto as Exhibit A and made a part hereof. [Plaintiff's Ex. 1]

(b) On October 14, 1965, a Letter to the Editor written by Miriam and Howard Laster, a copy of which is annexed hereto as Exhibit B and made a part hereof. [Plaintiff's Ex. 1]

(c) On October 21, 1965, an article entitled "Council Rejects By 4-1 High School Site Deal, "a copy of which is annexed hereto as Exhibit C and made a part hereof. [Plaintiff's Ex. 2]

(d) On October 21, 1965, an editorial entitled "The Limits of Compromise," a copy of which is annexed hereto as Exhibit D and made a part hereof. [Plaintiff's Ex. 2]

(e) On January 20, 1966, a Letter to the Editor from Clifford Simonson, a copy of which is annexed hereto as Exhibit E and made a part hereof. [Plaintiff's Ex. 3]

(f) On April 7, 1966, an article entitled "Bresler Repudiates Covenant Signed With City in 1962," a copy of which is annexed hereto as Exhibit F and made a part hereof. [Plaintiff's Ex. 4]

(g) On May 19, 1966, a Letter to the Editor written by Mrs. E. S. Ross, a copy of which is annexed hereto as Exhibit G and made a part hereof. [Plaintiff's Ex. 5]

(h) On June 9, 1966, an article entitled "Charles Bresler to Run For State Comptroller," a copy of which is annexed hereto as Exhibit H and made a part hereof. [Plaintiff's Ex. 6]

(i) On June 30, 1966, an article entitled "GHI Files Suit Against School Board; Bresler Influence Cited," a copy of which is annexed hereto as Exhibit I and made a part hereof. [Plaintiff's Ex. 7]

* * *

SECOND DEFENSE

2. The declaration fails to state a claim on which relief can be granted.

THIRD DEFENSE

3. The plaintiff is both a public official and an active participant in matters of pressing public concern to which the publications complained of were directed so that, in the absence of a showing by the plaintiff that the publications complained of were both falsely defamatory and published with actual malice toward him, such publications are constitutionally protected and nonactionable under the provisions of the First Amendment to the Constitution of the United States and Article 43 of the Constitution of the State of Maryland.

FOURTH DEFENSE

4. The words complained of in the declaration are fair and accurate reports of, and/or fair comment upon, official public and judicial proceedings and actions published by defendant in the course of its business of disseminating the news and, in the absence of a showing by the plaintiff that such publications were published with actual malice toward him, such publications are privileged.

FIFTH DEFENSE

5. The words complained of in the declaration are expressions of opinion and constitute fair comment in that they were published in good faith without malice upon matters of public interest and are privileged.

SIXTH DEFENSE

6. The words complained of in the declaration were published in their entirety as a matter of current public interest and in making such publications defendant believed same to be true and pub-

blished such words in good faith and without malice and with reasonable and probable cause.

WHEREFORE, having fully answered the declaration herein, defendant demands judgment dismissing the declaration, together with its costs and disbursements.

David Reich
8820 Burning Tree Road
Bethesda, Maryland

Roger A. Clark
1730 K Street, N. W.
Washington, D. C. 20006

Attorneys for Defendant Greenbelt Cooperative Publishing Association, Inc.

DEFENDANT DEMANDS A JURY TRIAL ON ALL ISSUES.

[Filed Nov. 21, 1966]

PLEA AND ANSWER OF DEFENDANT ALFRED M. SKOLNIK TO AMENDED DECLARATION

Defendant ALFRED M. SKOLNIK, by his undersigned attorneys, says:

1. As his general plea, that he did not commit the wrongs alleged in the amended declaration.

2. As his further answer to the amended declaration, defendant ALFRED M. SKOLNIK adopts and reiterates as if fully set forth herein the defenses to the publications in issue set forth in the Plea and Answer of Defendant GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC.

WHEREFORE, having fully answered the amended declaration herein, defendant ALFRED M. SKOLNIK demands judgment dismissing this action, together with his costs and disbursements.

/s/ David Reich

/s/ Roger A. Clark

Attorneys for Defendant
Alfred M. Skolnik

DEFENDANT DEMANDS A JURY TRIAL ON ALL ISSUES.

DEFENDANTS' REQUEST TO CHARGE NO. 3

PRIVILEGE TO REPORT PUBLIC MEETING

A newspaper also has the right to fairly and accurately report what takes place at public meetings. If you find that certain of the articles complained of were fair and accurate reports of what was said at public meetings of the City Council of Greenbelt you are instructed as a matter of law that plaintiff cannot recover based on the articles even if you find that the statements reported were false and defamatory unless you further find that the statements were reported with actual malice on the part of the defendants.

Restatement, Torts, § 611
Pulverman v. A.S. Abell Co., 131 F.Supp. 617, 622 (D. Md. 1956), aff'd 228 F.2d 797 (4th Cir. 1956)
Brush-Moore Newspapers, Inc. v. Pollitt, 151 A.2d 530, 533 (Ct. of App. Md., 1959)
Borg v. Boas, 231 F.2d 788 (9th Cir. 1956)
Ivie v. Minton, 147 Pac. 395 (1915)

DEFENDANTS' REQUEST TO CHARGE NO. 4

ACTUAL MALICE

The court will now instruct you as to what constitutes actual malice under the law. Actual malice means that a defamatory false statement is made with knowledge that it is false or with reckless disregard of whether it was false or not.

Reckless disregard of the truth is more than mere negligence on the part of the newspaper. The plaintiff

must show by a preponderance of the evidence that the defendants published defamatory false statements with a high degree of awareness of their probable falsity.

N. Y. Times v. Sullivan, 376 U. S. 279-80 (1964)

Rosenblatt v. Baer, 383 U. S. 75 (1966)

Garrison v. Louisiana, 379 U. S. 64 (1964)

DEFENDANTS' REQUEST TO CHARGE NO. 5

DESIRE TO INJURE NOT SUFFICIENT

Ill will, spite or a desire to injure the plaintiff does not constitute actual malice under the law. To repeat, in order to recover, the plaintiff must show by a preponderance of the evidence that the defendants published defamatory false statements in the articles sued upon which they knew to be false when they published them or which they published with reckless disregard of whether they were false or not.

Beckley Newspapers Corp. v. Hanks, ___ U.S. ___, 19 L. Ed. 2d 248 (Nov. 6, 1967)

Rosenblatt v. Baer, 383 U.S. 75 (1966)

[Filed Jan. 12, 1968]

MOTION FOR JUDGMENT N.O.V. OR FOR NEW TRIAL

Pursuant to Rules 563 and 567, defendants GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC. and ALFRED M. SKOLNIK move for judgment n.o.v. or in the alternative for a new trial on the following grounds:

1. The jury was not properly instructed that the constitutional protection to comment upon public fig-

ures extends to their public dealings and to public issues in which they become involved. Since the principal articles sued upon related to plaintiff's public dealings with the City Council in his capacity as a builder-developer rather than as a public official, the instruction of the Court that a public figure may be criticized only with respect to his "official conduct" was misleading and, in effect, completely negated the applicability of constitutional protection in the minds of the jury.

2. The jury was not properly instructed that what constitutes actual malice necessary to overcome the constitutional protection is limited to the making of statements with knowledge of their falsity or with reckless disregard of whether they were true or false. The Court instructed the jury at various times that actual malice includes evil intent, hositility or deliberate intent to harm the plaintiff and that actual malice as so defined could be inferred from excessive and intemperate language in the articles themselves. Thus, the jury verdict could well have been based on the belief that the defendants were liable because they were critical of the plaintiff or hostile to him at the time they published the articles in issue.

3. The jury was not properly instructed on the meaning of "reckless disregard" of the truth since the Court did not instruct the jury that "reckless disregard" means more than mere negligence and that there must be a high degree of awareness on the part of the defendants of the probable falsity of the statements published.

4. The jury was not properly instructed with respect to the fact that the defendants did not plead truth as a defense, because the Court did not make clear, as requested by counsel, that this simply meant that defendants were not attempting to prove that plaintiff had committed the crime of blackmail which was the innuendo alleged in the declaration, i.e., the jury was not instructed that the failure to plead truth meant

only that defendants did not adopt the meaning of the words alleged by the plaintiff.

5. The evidence was insufficient as a matter of law to establish that the defendants published a false statement with knowledge that it was false or with reckless disregard of whether or not it was false. The evidence submitted by plaintiff on the issue of actual malice amounted to the following:

A. That defendants published two articles accurately reporting what happened at a public meeting of the City Council which quoted citizens who characterized as "blackmail" a public proposal that plaintiff and the other owners of two pieces of property would sell one property for use as a school site in exchange for the City's agreeing not to oppose their request for higher density zoning on the other property, which zoning was contrary to the Greenbelt Master Plan.

B. That defendant Skolnik and other members of the News Review staff considered some of the persons in the relatively small community of Greenbelt who were quoted in the articles as being friends or acquaintances. There was no evidence of any discussion or understanding with these persons regarding publication of their comments.

C. That eight months after the articles in which the word "blackmail" was quoted defendants published an article at the time plaintiff's candidacy for Comptroller of the State of Maryland was first announced stating that reportedly a number of homeowners had started legal proceedings based on construction defects in their homes, which article was based, accordingly to uncontradicted testimony, on statements made to Mrs. Skolnik by a number of responsible homeowners, which testimony was substantiated by further uncontradicted evidence that here were in fact at least four suits filed against the companies in which plaintiff was a principal. Plaintiff's principal contention as to the falsity of this state-

ment was that he no longer had the controlling interest in the companies. There was no evidence, however, that the information was made known in the community or that there was any other basis upon which defendants should have been aware of it.

D. That during the almost 4-1/2-year period from April 1962 to the date of the filing of this suit, defendants published approximately 11 articles which plaintiff contended to be critical of him. Plaintiff contended there was only one false statement in these articles which was defamatory. That statement was in an article published on May 6, 1965, which accurately reported what was said at a City Council meeting regarding an order being entered against the "Builders of Boxwood Village" in a suit regarding alleged improper drainage practices. The claimed falsity in this article is that defendants did not also publish that the corporation in which plaintiff was involved and which was the original developer of the property had been dropped from the suit. There was no evidence that this information was known in the community at the time or that there was any other basis upon which defendants should have been aware of it. Moreover, a later front-page article on July 15, 1965, made clear that the order ran only against Ivy Homes, Inc., the other company involved in the suit.

E. That the individual defendant and some of the people quoted in the articles in issue were members of GHI, a 1,580-member housing cooperative, which 12 years before had owned the land which plaintiff was developing. Membership in GHI depended solely upon ownership of a GHI house. Neither Skolnik nor any member of the News Review staff was on the Board of Directors of GHI and there was no evidence that they participated in any public positions taken by GHI.

F. That defendant Skolnik and other members of the News Review staff were members of Citizens for a Planned Greenbelt (CFPG), a civic organization with 650 members formed for the purpose of support-

ing orderly development of the community in accordance with the Greenbelt Master Plan. Mrs. Skolnik, who had no policy-making position with the News Review, was a member of the 20-member steering committee which unanimously voted, some eight months after the articles in which the word "blackmail" was quoted, to raise money in the community to take legal actions against violations of the Greenbelt Master Plan. Some of the money from this fund was used to partially finance a suit by citizens unconnected with the News Review against plaintiff and others for injunctive relief arising out of the development by plaintiff of the Charlestowne tract contrary to covenants which he gave to the City and the Greenbelt Master Plan, which suit also claimed monetary damages to the individual plaintiffs. Mrs. Skolnik also allowed her telephone number to be used in two CFPG press releases requesting volunteer solicitors for the legal fund.

G. That defendant Skolnik and his wife occasionally spoke at public meetings regarding plaintiff's public activities.

H. That two months after this suit was instituted the News Review in an editorial urged the City to appeal its suit to enforce the covenants.

I. The unsupported innuendo that defendants resented plaintiff because he was a Republican. There was no evidence as to the political affiliation of any of the members of the News Review staff or of the organizations referred to by plaintiff.

J. The unsupported innuendo that Skolnik and the News Review staff resented plaintiff for not advertising more voluminously in the News Review. The only testimony that advertising affected the News Review's reporting policies was the statement by plaintiff that defendants published a nice story about the convalescent home built on his property only after substantial advertising was placed in the paper. The evidence shows, however, that the story was published

on October 28, 1965, one week after the story in which the word "blackmail" was reported and that the first small advertisement announcing the opening of the nursing home did not appear until seven months later on May 18, 1966.

This evidence even when considered most favorably to the plaintiff establishes only that defendants were critical of plaintiff's actions with respect to his development of land in violation of the Greenbelt Master Plan at the time they published the articles in issue. The evidence is completely insufficient as a matter of law to show that they published false statements with knowledge of their falsity or with reckless disregard of whether they were true or false. With the exception of the article regarding legal proceedings by the homeowners ("C" above), plaintiff did not even contend that the articles in issue contained material false statements of fact concerning him that were libelous. On the contrary, the evidence is undisputed that all the facts in the articles in issue which concerned the school site controversy and the covenants controversy were properly stated. The word "blackmail" was clearly an expression of opinion upon facts accurately stated in the article, i.e., the school site controversy.

Since there was no evidence whatsoever of a knowingly false statement of fact, the jury could only have concluded, as it was permitted to do under the Court's instructions, that defendants were liable for both compensatory and punitive damages because the jury thought the word "blackmail" was an unreasonable statement of opinion which was published by defendants because they were critical of plaintiff or hostile to plaintiff. To permit the jury to award substantial damages on this basis is in direct contravention of the constitutional protection afforded comment upon public issue.

6. The jury's award as to both compensatory and punitive damages was clearly excessive in light of the

evidence and the fact that plaintiff claimed no pecuniary loss.

David Reich

Roger A. Clark

Attorneys for Defendants

Docket Entries

1968

January 24 - Motion N.O.V. or For New Trial argued in open Court. Judge Mathias, Ferrell, Reporter. Motions denied.

January 24 - Judgment Absolute entered in favor of the plaintiff, Charles S. Bresler, against the defendants, Greenbelt Cooperative Publishing Association, Inc. and Alfred M. Skolnik, in the amount of Seventeen Thousand Five Hundred and 00/100 ($17,500.00) Dollars, with interest from date and costs.

STIPULATIONS OF FACT

COVENANTS

1. In late 1961 plaintiff went to Greenbelt city officials to explain his plans for development and to solicit the support of the city for his petition for R-18 zoning for a slightly more than 50-acre tract owned by him and his wife which later became known as the Charlestowne tract.

2. R-18 zoning permits the construction of apartments to a density of approximately 20 units per acre. R-30 zoning which permits the construction of townhouses and garden type apartments to a density of approximately 14 units per acre was not then in effect.

3. Plaintiff stated that he intended to build approximately 300 single family townhouses on the entire 50 acres. Plaintiff exhibited preliminary plans to City officials and submitted a plat layout of the townhouses as an exhibit in the zoning hearing.

4. There was testimony by Lewis Bernstein, a former City Councilman and Chairman of the City's Advisory Planning Board (APB) that when plaintiff appeared before the APB to explain his plans members of the APB expressed concern that the City would not be able to prevent more dense development of the property once R-18 zoning was granted.

5. After further negotiations with City officials, plaintiff and his wife executed a document dated April 16, 1962 entitled "Declaration of Covenants" (Covenants) whereby they agreed among other things that:

a. "the number of dwelling units shall not exceed an average of seven (7) per acre for the entire 50.4390 acres of land in said tract" and

b. that "in addition to the aforementioned limits on the number of dwellings per acre, the buildings shall conform with the R-30 zone as and when adopted . . . including . . . building height limits . . ."

6. The City Council thereupon endorsed the plaintiff's request for R-18 zoning for the Charlestowne tract which was granted by the County Commissioners on June 29, 1962. At the hearing appellee called the attention of the County Commissioners to the fact that he had executed the Covenants and the City supported his request.

7. Thereafter, plaintiff and a partner commenced the construction of townhouses in Parcel A of the tract comprising 11.3082 acres at an average density on each acre of approximately 12 units.

8. On June 2, 1964, plaintiff executed a document which was thereafter recorded entitled "Release of

Covenants" which purported to "abrogate and nullify" the Covenants because they had not been consented to by the holder of a deed of trust which had been placed on the property on April 3, 1962.

9. Ventures or corporations in which plaintiff was interested ultimately built a total of 322 units, including a 178 unit apartment house, plus a nursing home capable of housing 102 residents on approximately 25 acres of the Charlestowne tract.

10. R-30 zoning which was in effect at the time of the construction of the eight story apartment house did not permit the construction of a building of that height. Such a building was permissible under the R-18 zoning.

11. The remaining 25 acres of the Charlestowne tract were sold at public auction on June 9, 1965 for $725,000 because of plaintiff's default in the payment of $75,000 remaining indebtedness which was secured by the deed of trust on the property.

12. The following is an accurate transcript of the tape of the proceedings of May 17, 1965 meeting of the city council of Greenbelt which was identified and received in evidence as Defendant's exhibit 19:

Bernstein:	"How many units do you have planned at the moment?"
Bresler:	"I have another 178 units that are being planned right now."
Bernstein:	"That's a total of how many?"
Bresler:	". . . 298 units."
Bernstein:	"What is the covenants that you put on there in so far as units . . ."
Bresler:	"I'm well within it." (Someone spoke up and said 350 units)

Bernstein: "Our concern is when you talk of planning or you don't talk of it, you infer that there may be more than 350 units planned there."

Bresler: "If there ever are, you gentlemen will have to approve it first."

13. An editorial, entitled "How to Get Rich Quick", which was published in the News Review on July 7, 1966, was originally included in this action, but the allegations with respect thereto were subsequently withdrawn by plaintiff's counsel at a hearing on Defendants' Motion to Dismiss the Declaration for Failure to Make Discovery with Respect Thereto, as ordered by the Court.

SCHOOL SITE

1. The ventures in which Mr. Bresler was interested owned, among other things, two tracts of land in Greenbelt, one tract known as Parcel 15 and the other known as Parcels 1 and 2. The City wanted to place a school site on Parcel 15. Mr. Bresler's group had requested R-30 zoning for Parcels 1 and 2.

2. In February of 1965 the Maryland National Capital Park and Planning Commission adopted a Master Plan for College Park—Greenbelt and vicinity which showed, among other things, R-30 zoning for Parcels 1 and 2. This plan was rejected in July 1965 by the County Commissioners of Prince George's County on the basis that the overall density shown on the Plan was too great.

3. The City Master Plan for Parcels 1 and 2 at the time of the articles in issue called for a mixture of single family dwellings and low density apartments, which would have meant lower density zoning for this tract that Mr. Bresler was requesting..

OTHER

1. At the time plaintiff's Exhibit 6 was published, there was one law suit, entitled Foley v. Charles Burton Builders, Inc., in which a resident of the Lakecrest area was suing for recision of his contract for the purchase of a home because of alleged negligent construction. There was testimony that three additional suits were filed subsequent to the publication of the article in issue, one against Charles Burton Builders and the other two against Boxwood Village, Inc.

[Excerpts from Proceedings
Opening Statement on Behalf of
Plaintiff, Upper Marlboro, Md.,
January 3, 1968.]

* * *

[10] [MR. CHASANOW] Now we have not been able to determine why Mr. Bresler was singled out. I say this for this reason. It is true he is a public figure and I suppose everybody needs a whipping boy, but the evidence will show, one, that Mr. Bresler is only a minority owner in this land. Unfortunately, he is not wealthy enough to have purchased this land himself and built and developed it himself, so his interest approximates fifteen per cent or sixteen and two-thirds per cent, or in one case, I believe, it ran as high as twenty-five per cent, but a minority owner.

* * *

[Excerpts from Transcript of Proceedings]

Upper Marlboro, Maryland
Wednesday, Janury 3, 1968

* * *

[11] ALFRED M. SKOLNIK

a defendant herein, was called as a hostile witness by and on behalf of the plaintiff, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHASANOW:

* * *

[12] Q. What is your association with Greenbelt Cooperative [13] Publishing Association, Inc.? A. I was elected President of the Board of Directors.

Q. When? A. Originally in — we are elected every year. Every year we have an election and I have been elected for several years now as President.

Q. Do you know how many years? A. I think since 1959.

* * *

Q. That corporation publishes the Greenbelt News Review? A. Yes.

Q. In order to try to shorten this just a bit; Mr. Skolnik, is it correct the Greenbelt News Review is distributed without charge to every house in Greenbelt? A. Approximately, yes.

Q. What is your total circulation or distribution? A. About 4,500.

* * *

[14] Q. What are your duties as President of the corporation? A. I preside over the Editorial Board, preside over the meetings, and I am one of the senior staff members who write articles and review articles during the night of the publication of the paper.

Q. And are you one of the principal writers of the articles? A. I write articles, yes.

Q. Do you review the articles that are written by others? A. When I am down at the office I do.

[15] Q. Well, are you down there — A. I am frequently down there, yes.

Q. Every week almost, or every week? A. Well, almost every week.

Q. So it would be correct to say that you take an active part in the writing, reviewing of the material that goes into the paper? A. Yes.

Q. Your wife is also on the staff of the paper? A. Yes.

Q. Does she take an active part in the writing of articles, reviewing of the material? A. Well, she writes the articles.

Q. Is she one of your staff reporters? A. Yes.

* * *

[16] Q. Now when a story comes in written by one of your reporters, what do you do to review that story? A. Well, there is a staff of three to six senior —

Q. I am talking about you specifically. A. I am just one of the — I am one of the Editorial Board. If we are down there that night we will review the major articles, the Editorial Board, the senior staff members will review the major articles that are brought in.

Q. All of you? A. Whoever is down there, yes. Generally speaking we circulate the articles around.

Q. You are usually there? A. I am usually there.

Q. What do you do to investigate the background of the article for factual comment?

MR. CLARK: I object to that question Your Honor, on the grounds he hasn't indicated what articles he is talking about.

MR. CHASANOW: We are speaking generally now, Mr. Skolnik.

THE COURT: Wait just a moment. The Court will overrule the objection. The Court recognizes it as a general question, but he is asking what the policy of the paper is.

[17] Overrule the objection. You may answer the question.

THE WITNESS: May I have the question again, please?

MR. CHASANOW: Would you read the question?

(Question read)

THE WITNESS: I rely on my general knowledge; I ask other people who know something about the subjects.

BY MR. CHASANOW:

Q. Where an individual is referred to, do you personally communicate with that individual? A. When an individual —

Q. To be more specific, if Mr. Bresler's name is mentioned in an article, do you contact Mr. Bresler to discuss the contents of the article with him or to get his views? A. No, if there is no confusion about the facts, if a statement is made, or proposal is discussed and it is discussed at a meeting; no, we wouldn't go back and question Mr. Bresler or anybody as far as that goes.

Q. Have you ever studied journalism? A. No, I wouldn't say so.

Q. What degrees do you hold? A. I hold a Bachelor of Arts and a M. A. and a Ph.D.

Q. Do you write any of the editorials? A. Yes, I have written drafts of editorials.

* * *

[19] Q. Do you have a paid circulation? A. Only for mailing.

Q. How many do you have? A. Mail? About 75.

* * *

[20] Q. Now do you know Charles Bresler? You have seen him before, haven't you? A. Yes, two or three times before.

Q. Where? A. I think at one council meeting, a couple of council meetings probably.

Q. Any place else? A. Maybe a zoning meeting but I am not sure.

Q. Any social affairs? A. Might have met him at a social affair.

Q. Do you recall whether you did or didn't? A. I think I met him at a social affair.

Q. Do you recall any specific social affair? A. Well, let's see. I think it was at some country club.

Q. Where? A. Prince George's, some country club, we were invited [21] to a function there and I think I saw Mr. Bresler there.

Q. Did you have a discussion with him on that occasion? A. Oh; I am sure I might have exchanged a word or two.

Q. Did you ever have a discussion with him about his plans for development, building in Greenbelt? A. I might have, yes.

Q. You don't recall specifically whether you did or didn't? A. That is right, it was a social gathering, we may have discussed something.

Q. Do you recall what you discussed? A. No, I don't recall what I discussed.

* * *

Q. Have you ever instructed any of the members of your staff to call Mr. Bresler to verify any articles which concerned him? A. No, we have no general — what we have is a general rule, that if you don't know the facts, if there is confusion about the facts, you call the principals involved.

Q. Well, how do you know whether you know the facts? [22] A. Well, by looking at the article and questioning it. In other words, if you are reviewing an article and you see something that strikes you, this doesn't look right, you go back and ask the reporter, "are you sure you got these facts right"?

Q. So what you are saying, it must look wrong on the surface? A. Yes, just as any normal reader would question something.

Q. Have you ever had any occasion on which there were some doubts as to the facts in an article concerning Mr. Bresler where you felt it necessary that you or the reporter contact him? A. Yes, I remember one that happened a few months ago. We had gotten reports that one of the acreage, one of the lands owned by Mr. Bresler was being leveled of trees, was right across from a new project which he had built, and the homeowners there were very agitated, they didn't understand, why was that land being leveled, because they had been promised —

* * *

[23] Q. Was that the only occasion on which you were or a member of your staff, to your knowledge,

got in touch with Mr. Bresler about an article? A. No, there was another occasion. We had seen a newspaper report in the Washington press that a high rise apartment project was going up on Parcel 15 and our reporter was curious because Mr. Bresler had promised there would be no high rise or said there wouldn't be any increased density. And our reporter called up Mr. Bresler and Mr. Bresler said that he had no plans for a high rise and he didn't know what [24] it was all about.

Q. You say he promised. Did he promise you? A. No.

Q. Did he promise the reporter? A. No, he promised the City.

Q. Now Mr. Skolnik, we are going to be talking about some organizations and names.

Now Mr. Skolnik, you are a member of Greenbelt Homes, Inc., which I have labeled "G.H.I."; is that correct? A. Yes.

MR. CLARK: May it please the Court, I wish to object to this line of questioning. That relates to the defendant's membership in these civic organizations. Because this type of evidence is constitutionally insufficient to constitute evidence of malice for reasons set forth on page 17 of my trial memorandum.

* * *

[27] MR. CHASANOW: We expect to show that these people are so interwoven this was not merely reporting but this group was having meetings and discussing what they were going to say about Mr. Bresler, print, what members of their own clique or group actually had to say about him. This was not impartial reporting. This is not what the Supreme Court was talking about, an unfair comment on matters of public interest and a matter of a group itself together with another group actually making these comments so they would be published. I think we have a right to show everything that goes toward malice or lack of fair comment.

THE COURT: The Court will agree with you, Mr. Clark, that you read to me from your memorandum a

good dissertation [28] regarding questions of instructions and the applicable laws relative to those instructions and the basis upon which libel may be sustained. The Court does not sustain your objection on the reasons given. The Court doesn't disagree with any of the statements you made regarding the case as quoted, as to the applicablity in the case, but I didn't hear anything that indicated what evidence the Court would permit to be introduced which may develop anything or gross neglect to the extent of disregarding the actual truth or the malice and for that reason and for the reason stated, the Court will overrule the objection as to this line of questioning because if he is to get to obtaining this objective he has to lay a proper foundation for it and where he starts with an attempt to prove this foundation is not a question for the Court to direct and for these reasons the Court will overrule the objection because the reasons you gave is to the applicable law and if I were to sustain each objection that you had to his commencing to get to the point of obtaining back — to presenting background, it is a real tough cookie to prove. The Court realizes this and if I cut him off every time I ask a question to develop these facts and circumstances, rest assured he would never get anywhere close to — it may well turn out that way, maybe he won't, but the Court will overrule the objection.

For the reason stated I will overrule the objection.

* * *

[30] BY MR. CHASANOW:

Q. Are you a member of Citizens for a Plan at Greenbelt, which I have labeled CFPG? A. Yes, my family is.

Q. And of course you are associated with the News Review.

Now Mrs. Skolnik, what is Mrs. Skolnik's first name? A. Elaine.

Q. Of course she is a member of G.H.I. by virtue of family membership.

Now is she a member of the CFPG? She is, is she not? A. Yes, family member with me.

Q. Isn't she also a member of the Steering Committee, the group of twenty that I discussed in my opening statement? A. Yes.

* * *

[31] Q. Now isn't it correct G.H.I. or Greenbelt Homes, Inc. had once owned all the land that we have been talking about with relation to Mr. Bresler, namely, Parcels 1 and 2 which your counsel mentioned and Parcel 15, which your counsel mentioned? A. Yes. I am sure — you are asking me the exact metes and bounds or things like that?

Q. No. A. Approximately, I would say yes.

Q. It included all of their land plus a good deal more, does it not, approximately 700 acres? A. Yes.

Q. And they bought it and they sold it at a profit? A. My recollection is yes, they did.

Q. Instead of developing it themselves? A. Yes.

Q. And others bought some of that land, too, besides anyone associated with Mr. Bresler? A. Yes.

* * *

[33] Q. Had you not been present at the discussion of the Board of Directors prior to the time that it had been sold? A. I became a reporter for the News Review in the spring of 1955. I think the first meeting I covered was when the President said we are just about finished up this sale with Warner-Kanter I think it was. I didn't get in any of the preliminary discussions about that.

* * *

[34] Q. After Warner-Kanter purchased it to whom did they sell it? A. Well I can't remember the whole history of that. [35] Offhand I think Zeckendorf got into it somehow, I don't know how. I don't know what his first name is, Zeckendorf.

Q. When did you first become interested in the development of that land? A. First became interested when all of these parcels came up for zoning in early 1962.

* * *

[41] Q. Mr. Skolnik, I show you Plaintiff's Exhibit No. 1 and ask you if that is a copy of the News

Review which you publish? A. Yes.

Q. And the date on that is — A. October 14, 1965.

Q. Do you recall the article on page 1 in the last two columns entitled "School Site Stirs up Council Rezoning [42] Deal Offer Debated"? A. Yes, this is an article by Dorothy Sucher.

Q. Did you review that article? A. Yes, I saw it and at the News Review office, on Tuesday night.

Q. Before it was published? A. Yes, I did.

Q. Did you read the article in its entirety? A. Yes.

Q. Did you note first that it referred to Consolidated Syndicates, Inc., (Charles Bresler-Theodore Lerner)? A. Yes.

Q. So the article referred to Mr. Bresler as well as Mr. Lerner and their associates? A. Yes.

Q. Do you know how many owners of Consolidated Syndicates there are? A. No, I do not.

Q. Did you attempt to check? A. No.

Q. Was there any reason why you put Charles Bresler and Theodore Lerner in parenthesis other than the other owners? A. Because the material we were getting from City Council referred to them as the Bresler and Lerner tract.

[43] Q. I am asking you did you attempt to ascertain the names of the other owners so you could include the name of all owners? A. No, I did not.

Q. There were no other reasons for your merely mentioning those two names? A. At each meeting there is usually an agenda or memorandum from the Manager which gives the background of issues that are coming up and that is the way it was referred to.

Q. Now this article related to the school site controversy, did it not? A. Yes.

Q. And am I correct in saying that the debate ensued because the School Board had decided to put a senior high school and junior high school and I believe an elementary school on Parcel 1 and 2, which was adjacent to the Baltimore-Washington Parkway? A. No, that is absolutely wrong.

Q. What is your version of the controversy? A. The controversy at that time, Parcels 1 and 2 were not involved as a school site at that point of time at all. What happened was that the City had a proposal that the developer would be agreeable to putting a school site on Parcel 15, which is the site preferred by the City and which [44] is preferred by Maryland National Capital Park and Planning Commission.

Q. Just a moment. A. You are asking for a complete detail.

Q. All right, give me your version of it. A. This site was approved by the School Board, approved by the Maryland National Capital Park and Planning Commission and approved by the City Council in its Master Plan. This is the site that everyone thought at that time would be a high school site, Parcel 15.

At their meeting, the City said it had gotten a proposal that the developer would be agreeable to putting a school on Parcel 15 providing the City had no opposition to higher density on Parcels 1 and 2.

Q. What do you mean by higher density? A. Higher density than that that the City showed in its Master Plan.

* * *

[50] Q. What is in front of Parcels 1 and 2 now? A. In front of — that is G.H.I.

[51] Q. G.H.I. Homes? A. G.H.I. Homes.

Q. And these are row houses that are presently in front of that site? A. These are row houses, individually owned houses.

Q. These are wooden houses; is that correct, frame homes? A. Yes.

Q. What would they sell for? A. I don't know what they would sell for.

Q. Approximately? A. Five to ten thousand.

Q. What did they sell for originally when the Government sold them; do you recall? A. Three or four thousand.

Q. Now getting back to this article, this is what this article was all about; then, the debate about the school site; correct? A. (No response)

Q. Now this reports on a meeting that was held by the City Council, at which numerous people spoke; correct? A. Correct.

Q. Including your wife? A. She possibly spoke.

Q. You are not sure? [52] A. Well, I read the article, I think she is quoted there, so she must have spoken.

Q. All right, now your article quotes a couple of people. Would you read the first quote which is underlined in red? A. "'It seems that this is a slight case of blackmail,' commented Mrs. Marjorie Bergemann on Monday night, and the word was echoed by many speakers from the audience."

Q. But the article doesn't identify who the other speakers were? A. I think it did refer to somebody later on.

Q. Did you check to determine whether or not that word had actually been used? A. Blackmail?

Q. Yes. A. Yes, I am sure it was used.

Q. How are you sure? A. In the first place I was there.

Q. You were present at that meeting? A. Yes. And secondly we had several staff members who were there.

* * *

[53] Q. Mrs. Bergemann, is she a member of G.H.I.? A. I don't believe so.

Q. Was she a member of G.H.I.? A. At the point of the time of the article?

Q. Prior.

Well she lives on Lakeside, doesn't she? A. Yes.

Q. Was she a member of G.H.I. before she moved to Lakeside? A. I think she was.

* * *

[54] Q. Let's get up to the Steering Committee. Is she a member of the CFPG now? A. I understand she is a member of the CFPG now.

Q. Is she a member of the Steering Committee? A. My understanding is she is not.

Q. Was she ever a member of the Steering Committee? [55] A. My understanding is she is not.

Q. Was she ever a member of the Steering Committee? A. Yes.

Q. My understanding was she was.

Did you check your files to see? A. We can check the News Review.

Q. Fine, that is exactly what we are going to do.

I refer you to Plaintiff's Exhibit No. 4, the Greenbelt News Review for Thursday, April 7, 1966 and I refer you specifically to Page 2, the article entitled "CFPG Meets, Vows to Continue Fight."

I will ask you if you will read beginning with a new Steering Committee. A. This is an article dated April 7, 1966, which is six months after the article that was brought up before.

"A new steering committee was elected for the coming year. All fifteen members who indicated a desire to serve again were re-elected. They were Harold Siegel, Elizabeth Maffay, Harvey Geller, Robert Foley, James Hanna, Leo Gerton, Al Herling, Jim Locicero, Cliff Simonson, Elaine Skolnik, Edgar Smith, Charles Schwan, Francis White, and Thomas White.

"Five new members elected were Marjorie Bergemann, Vane Glendenning, Norman Weyel, Ed [56] Karlander, and Gordon Allen."

Q. So at the time she was quoted you don't know whether she was a member of CFPG? A. I don't know.

* * *

[57] Q. Now, would you call her a friend? A. Yes, I would call her a friend.

* * *

[59] Q. All right, go on. A. "Speaking from the floor, Gerald Gough, commented:

'Everyone knows there's a need for a school — just walk through the halls of High Point. The developer knows there's a need and says "we'll meet your need if you meet our need." In my opinion, it's highly unethical.'"

Q. That is G-o-u-g-h, is it not? A. Yes.

Q. Member of G.H.I.? A. Yes.

Q. Member of CFPG? A. I believe so.

Q. Steering Committee? A. No, I don't recall his name being on the Steering Committee.

Q. Was he ever a member of the Steering Committee? A. I am sorry, what was that?

Q. Was he a member of the Steering Committee? A. I am not an expert on the Steering Committee, the Steering Committee of CFPG. We have a lot of newspaper articles. I don't know. I don't remember.

* * *

[60] Q. All right, now, would you go and read the paragraph beginning: "Among the parents who spoke —"? A. "Among the parents who spoke was Mrs. Joseph Rosetti, who said: 'I have several children going into high school, but I would rather adhere to the Greenbelt Master Plan than overcrowd the town with dense development. I would stand for my children's discomfort, rather than give in to a blackmailing scheme.'"

Q. So she used the word "blackmailing" and you quoted her also? A. Yes.

Q. Now, Mrs. Rosetti is not a member of G.H.I? A. No, she is not.

Q. Right. Member of CFPG? A. Yes.

Q. On the Steering Committee? A. At this time or when?

Q. You tell me. [61] A. I understand she is now a member of the Steering Committee.

Q. Was she then? A. I don't believe so.

Q. You are not sure at that time — A. I don't believe she was. I do not believe she was a member of the Steering Committee at that time.

Q. Is she a member of the Steering Committee now? A. Yes.

Q. So we will mark that "S.C." now.

Did she ever work on the News Review? A. No.

Q. Do you call her a friend? A. No. Right now? Yes, I know her and I consider her a friend. At that time I did not know her.

Q. Well, had you ever been over to her house? A. No. Since this suit was filed I have been over to drop stuff and so forth.

Q. You mean you just became friends since she called Mr. Bresler a blackmailer? A. This was a year and a half ago, this story was written a year and a half ago.

Q. How long after that article was published did you become friends with her, Mr. Skolnik? A. This article was written in October of 1965 and [62] during the ensuing months Mrs. Rosetti came down to many City Council meetings. She was very much concerned over the fact that a high rise apartment was built in her backyard almost and she was bothering — not bothering, just making everyone know, making everybody known of her and her neighbors' problems. And that is how we got to know her.

Q. So you are friends now? A. Yes.

Q. You have a common interest? A. I have a common interest with a lot of people in Greenbelt.

Q. What is that common interest, hatred of Mr. Bresler? A. No, no.

Q. Disliking Mr. Bresler? A. No.

Q. What is the common interest? A. The common interest is seeing that Greenbelt develops in an orderly fashion, doesn't become a suburban apartment project, but becomes or continues to be a real town, a town with low density, minimum traffic and all the —

Q. All right, I will let you deliver your speech later, Mr. Skolnik. Let's just go on.

Mr. Skolnik, you have got three degrees, including a Ph.D.; is that correct? A. Yes.

[63] Q. So I presume you know what the word "blackmail" means? A. In general.

Q. Is it a crime? A. Is "blackmail" a crime?

Q. Yes. A. My understanding is it is somewhat in the category of a crime.

Q. Let's not hedge. Is it a crime or isn't it? A. I understand there is a crime called "blackmail".

Q. You attended that meeting. Was there anything about Mr. Bresler's proposal that indicates that he

was guilty of "blackmail"? A. In the context of the —

Q. I am asking you. You know what blackmail means and you say you know it was a crime. Is there anything in what Mr. Bresler had proposed as discussed at that meeting, which justified the use of the word "blackmail" in connection with this proposal? A. The term "blackmail" in the context that it was used?

Q. Just answer my question first and then I will let you explain, Mr. Skolnik.

Was there anything —

Would you repeat the question to him, please?

[64] (Question read)

THE WITNESS: These were statements of opinions there, statements of people there.

BY MR. CHASANOW:

Q. I know they were statements. I am asking you if their use of the word "blackmail" was justified or a fair comment on what he was proposing to the town or the Park & Planning Commission or anybody concerned, of the School Board. Was there anything in his proposal which justified the accusation of blackmail, which you have identified as a crime? A. We never — all I can say again is that we were viewing this as a description, a colorful description, what was going on at that time. We never looked at it as a description of criminal blackmail.

Q. Mr. Skolnik, please just answer my question. A. I did answer your question.

Q. Let me make it as clear as I can.

Mr. Bresler was making certain proposals which was being criticized at this meeting, correct? He was asking for R-30 zoning, which had already been recommended by Maryland National Capital Park & Planning Commission. And if what you say is true and for the purpose of argument we will assume that it is true, that Mr. Bresler was saying, "I will not oppose putting the school on Parcel 15," which he also owned; [65] correct? And was going to get paid for. "I will not object to it, if you will go along with zoning R-30 for Parcels 1 and 2."

Is that correct? Is that the substance of the thing?

All right, now, was there anything in that proposal, forgetting about what these people said, was there anything in that proposal which justified the use of the word "blackmail" by anyone? A. I think that the word was used to indicate a situation where the developer was using two pieces of ground as a lever to get a higher density to one piece of land in exchange for something the city needed.

Q. Now, wait a minute, Mr. — is that your definition of what went on? A. That was my —

Q. Now, let's go back a bit then.

We talked about covenants before. Now isn't it true that there was an agreement between the City and Mr. Bresler if they would go along with his requests for R-18 zoning that he would sign these covenants, restricting development to approximately seven units an acre and give the City three acres of ground. A. This had nothing to do with the high school.

Q. I am asking you, wasn't there a similar situation? In other words, he was offering a swap for the City's recommendation. He had done it once before, didn't he, on the covenants and the three acres of ground. Wasn't that [66] something that had been done once before? A. Yes.

Q. All right, did anybody use the word "blackmail" on that occasion? A. I don't recall any word like that.

Q. All right, this meeting you attended, this was a pretty hot meeting where people are inclined to say improper things, unjustified things. But my question to you is what was there about his proposal, which justified anybody in leveling the accusation of blackmail against Mr. Bresler? Now, don't give me the context or don't give me the — don't give me anything else, just answer my question.

MR. CLARK: Your Honor —

MR. CHASANOW: What was it?

MR. CLARK: I object to this line of questioning. It is highly argumentative.

THE COURT: Just a minute.

The Court is going to overrule the objection and if he can answer the question, answer it, if not, we will go on to the next one.

THE WITNESS: All I want to say is we didn't focus on that word, it didn't strike us as being improper to use because it was used throughout the meeting and it seemed to be a general feeling of some of the citizens there that there was and the word to describe the situation. All we [67] were doing was reporting what was said there and also what someone else said that it wasn't blackmail.

BY MR. CHASANOW:

* * *

Q. All right, let me point to just one little thing that I have marked in the box. That "blackmail" caption, who was that quoting? Who inserted that caption? A. No subtitle —

Q. Did you insert that caption? A. No.

Q. Who inserted that caption in black type? A. The whole story has subheads. What happens is whoever reviews the story takes out words and puts them in there to indicate, so it won't be a solid piece of type. I don't know who took out the word "blackmail". It probably struck them, put in the word "blackmail". They didn't probably put in anything more than putting in "Rumors and Facts". Or putting in "Delay Probable" and "What Facts?"

Q. You mean nobody thought a thing about putting "blackmail" in bold face type so it stood out to anyone who read —you just finished saying now that you were quoting. Who were you quoting in that? Was that quoting you as a [68] person who reviewed the article or quote the reporter who inserted it? A. The next sentence: "It seems that this is a slight case of 'blackmail.'"

Q. I understand. The next sentence we have read that. I am asking who inserted this bold face heading, "Blackmail". A. I wouldn't know who inserted it, whoever was working on the desk that night, whoever wrote the headline.

Q. Did you read it? A. The word "blackmail"? I doubt if I even saw it.

Q. Didn't you read the article? A. I read the article, but the subheads are put in later. Somebody else goes through and puts subheads in. They say this is too much type, we have to break it up, so they go ahead and put the subhead in.

Q. Who was that someone? Was it you or someone else, Mr. Skolnik? A. I don't recall putting any subheads in the story.

Q. Do you deny that you did? A. I think that I will deny it, because I don't recall it. I don't write headlines. I don't read headlines generally speaking.

Q. That is not a headline, that is a subcaption. A. That is a subcaption.

Q. Is this your word? [69] A. No.

Q. Do you know who put it in? A. I haven't the remotest idea who put it in.

Q. But you are the President of this corporation, responsible for the entire operation, are you not? Are you trying to say there is someone else, that this is someone else's responsibility? A. I am saying I did not see this before it went into print. That is what I am saying, the blackmail part. I don't recall saying that. I read the content of the article.

Q. Do you think the insertion of that word "blackmail", which was not a quote, but an insertion, was on a fair comment or what took place at that meeting with reference to Mr. Bresler? A. It doesn't draw attention to Mr. Bresler, it just says "blackmail". In other words, there was a discussion on — one person says it was blackmail and the next person right after it says it was not blackmail. This subhead, I will show it to the jury, refers to why it was not blackmail, and not blackmail.

Q. Any reason why the subhead didn't say "not blackmail" and instead of "blackmail"? A. Possibly because there wasn't enough space. I don't know.

* * *

[71] Q. So you are well aware of the fact Lakeside North had covenants from the City allowing them to build 12 units per acre; correct? A. Correct.

Q. Did you ever scream about the fact they were building more than seven per acre? Or did you ever question why Mr. Bresler was held to seven and they were given twelve with a lower zoning? A. No, I have no recollection of any discussion on that.

Q. Well, you have written a lot of articles about these covenants, did you not? A. Yes.

Q. Did you ever write any articles about Lakeside covenants building more than seven per acre? A. No, this Lakeside North covenant was granted back in 1962.

[72] Q. When was Mr. Bresler's covenant so signed? A. That was in April of 1962, and this one I think was toward the end of the year.

Q. Same year, '62? A. Yes.

* * *

[74] Q. Were there any reasons why Lakeside North was not restricted to the same units, seven units per acre? A. I did not sit in any Lakeside North discussion.

Q. Did you protest? You were concerned about density, were you not? [75] A. Yes.

Q. Weren't you concerned with the fact there should not be more density than presently existing in the row houses in Greenbelt? A. My understanding was there was out in the periphery of town and no one seems to feel this was out of line with what the City wanted.

Q. It was within Greenbelt, wasn't it? A. Yes, it was on the outer periphery. It wasn't part of the core.

* * *

Q. You are talking about the periphery. Isn't Parcels [76] 1 and 2 in the periphery? A. Yes, they are in the periphery, too.

Q. So there is no difference in Parcels 1 and 2 and Lakeside North as far as periphery? A. Yes, they are on the periphery.

Q. As a matter of fact, Lakeside North is not on the periphery, because there is Greenbelt property beyond that, like the Springhill Lake Apartments be-

yond that, aren't they? A. These properties abut the northern boundary of the City.

* * *

Q. They said they wanted to change R-18 zoning which we have discussed as being garden apartments. What did they finally build on Lakeside? A. They built apartments, as far as I know.

[77] A. He built apartments. I just don't know what you mean by garden.

Q. You still don't know what garden apartments are? A. If you want to define the term, okay, but every apartment project is listed as garden project.

Q. They are not town houses, are they? A. No, town houses, that is right, I don't think they are town houses.

Q. So Springhill Lake actually went ahead and not only did they exceed seven per acre but they built apartments? A. Springhill Lake?

Q. I mean Lakeside North. They built apartments, not town houses; is that correct? A. I think so, I haven't been up there.

Q. Did you publish anything about Lakeside North violating the zoning by building — A. There was an article in the News Review in which the City Council —

Q. Who is the owner of Lakeside North? A. Well, it keeps shifting around. Who is the owner now?

Q. Who was the owner at the time of the garden apartments were built? A. I think Rozansky and Kay.

Q. Did you ever publish a headline featuring Mr. [78] Rozansky or Mr. Kay as having violated the covenants? A. This particular item was not a major item in Greenbelt.

Q. Why not? A. Because no one raised any discussion at public Council meetings and so forth. It was not a subject of discussion except incidentally.

Q. You were raising the question, though, by writing feature articles and editorials, were you not? You wrote quite a few of them about Mr. Bresler, did you not? A. He had the major land holdings in Greenbelt.

Q. Larger than Al Smith? A. No, I said the major.

Q. What do you mean by "major" or "larger" than Springhill Lake? A. He was one of the major land holders.

Q. Oh, you say one of them. There were a couple of larger? A. I think Springhill Lake was larger.

Q. And Al Smith holdings were larger?

600 acres? A. I don't think 600 acres over on that side.

Q. You never checked to find out? A. I think it is closer to 300.

Q. But you never questioned what he was doing? [79] A. Oh, yes.

Q. Did you ever run his name in headlines? A. Yes.

Q. When? A. Do you want me to produce the newspaper? I will be glad to.

* * *

[80] Q. Mr. Skolnik, do I understand you were present at that meeting when you testified you were present at the meeting when these words "blackmail" were told? A. Yes, I checked my records and I found I was there.

Q. Let me read from your deposition, page 41, Mr. Clark, of Mr. Skolnik's deposition.

"BY MR. CHASANOW:

"Q. What was your understanding as to whom Mrs. Bergemann was referring to when she used the word 'Blackmail'?

"A. Well, I wasn't there, so I don't know what you mean by my understanding."

Do I understand you are now changing your testimony? A. After I replied to that deposition I went home and checked through my records and found some notes that I had taken and now recollect I was there for at least a part of the meeting.

* * *

[81] Q. And as I recall, as mentioned in the story, Mrs. Skolnik spoke from the floor? A. Yes, I think the story says that.

Q. Did Mrs. Skolnik make any remarks about Mr. Bresler? What did she speak about? A. She mentioned the fact that she thought that the condemnation suit for the land should be speeded up.

Q. Did she say anything about blackmail? A. No.

Q. Did you speak? A. No.

Q. Anyone else on the staff of the News Review speak at that meeting? A. I don't have any recollection of anyone else speaking.

* * *

[82] Q. Referring again to Plaintiff's Exhibit No. 1, on page 2 there is a two-column statement of Greenbelt Homes, Inc., on zoning Parcels 1 and 2. And it says:

"Space purchased by Greenbelt Homes, Inc."

Does that mean that was paid advertisement? A. Yes.

Q. And it is signed by Charles F. Schwan, Jr., President of Greenbelt Homes, Inc.

Now, let's find out something about Mr. Schwan. Now, he is President of G.H.I.; right? A. Right.

Q. Is he a member of CFPG? A. Yes.

Q. Member of the same Steering Committee? A. Yes.

* * *

[83] Q. Would you call him a friend? A. Yes.

Q. You say that G.H.I. advertised in the paper? A. Yes, they are a regular advertiser. The real estate firms in town run advertisements.

Q. Every week? A. Yes, I would say so.

* * *

Q. Now, referring to Plaintiff's Exhibit No. 2 of the Greenbelt News Review dated Thursday, October 21, 1965, referring specifically to the article in the last two columns [84] headed "Council Rejects by 4-1 HIGH SCHOOL SITE DEAL", written by Mary Lou Williamson, did you review that article? A. Yes, I saw it before it went into print.

Q. Now, referring to page 3, would you read the three paragraphs beginning under the heading "Citizens Speak"? A. "A procession of citizens took the

floor to make impassioned speeches — some from prepared texts, some extemporaneously. The mayor occasionally had to caution them to refrain from engaging in personalities.

"Albert Herling suggested skulduggery in the September court postponement. Although he praised most of the City Manager's report, he criticized the section entitled 'Risks and Conclusions,' saying they appeared negative in the extreme. He suggested a list of positive steps that council ought to take: 1) fight Bresler's 'blackmail'; 2) make clear to the Board of Education — no deals; 3) make clear to the District Council (zoning authority) unanimous opposition to the requested R-30 zoning; and 4) seek the swiftest possible court settlement. 'For anything less,' charged Herling, 'Would be other than what you believe. And when the chips are down, this is exactly what you'll do.'

"Emotions rose along with the temperature of [85] the room."

Q. Now, Mr. Herling:

Member of G.H.I.? A. Yes.

Q. Member of CFPG? A. He is a member of CFPG.

Q. On the Steering Committee? A. I don't believe he is at the present time..

Q. Was he on the Steering Committee? A. At this time? I think so.

Q. Did he ever work for News Review? A. No.

Q. Would you call him a friend? A. Yes.

Q. Now what did you mean by the phrase — you read this? A. Yes.

Q. "Albert Herling suggested skulduggery in the September court postponement."

Now what — this was not a quote; correct? This was the reporter's phraseology which you reviewed and approved; correct? A. I didn't know I reviewed it.

Q. What did you mean by "suggested skulduggery"? A. What I meant?

[86] Q. Yes, when you approved it. You didn't strike it, did you? A. I didn't focus on the words. There was no reason for me to focus on it.

* * *

Q. Who did you think he was talking about? He mentioned Bresler's name in the same paragraph; correct? And you are not quoting Mr. Herling, you are saying he suggested skulduggery. Now why did skulduggery — what did skulduggery mean in the context in which it was published? A. I wasn't at the meeting. I assumed this was the reporter's interpretation of the situation and I had no reason to stumble over it or focus it or look at it or anything like that.

[87] Q. What is the purpose of reviewing these articles? Are you reviewing them to determine no scandalous or improper or libelous articles, material will get in the article? A. No, my purpose is to keep what is going on and use my general knowledge of Greenbelt to make sure some of the facts are correct, that sort of thing. We have an editor who has responsibility for editorial changes and that sort of thing.

Q. You mean it is not your responsibility as President of the overall organization? A. I have a responsibility.

Q. So you are not trying to pass the buck back to the editor? A. No.

Q. And did you review the article? A. I did look at the article.

Q. Would you tell us what was meant? This was an employee under your supervision; correct? A. Yes.

Q. Part of your staff? A. Yes.

Q. Fine. What was meant by suggested skulduggery? A. In reflection, if you are asking me what I think it meant now, I think it means something amiss, something improper perhaps.

[88] Q. Amiss? Improper? A. Yes.

Q. Legally improper? A. Just improper. I wouldn't know how to define it any further.

Q. Morally improper? A. I just wouldn't be able to define it any further.

Q. When you say "improper", would you distinguish between something morally improper or legally improper? A crime is improper, isn't it? A. I am not a lawyer, but if you say so, yes.

Q. Do you think a crime is improper? A. Yes, of course.

Q. All crimes or just some of them? A. Well, let's not get into a philosophical discussion of what crime is.

Q. Well, skulduggery. What was skulduggery? What was it intended to mean? What was it supposed to convey to the person that read it? A. That there was something amiss, that there was several postponements and the reason for the postponements were obscure and this person, Mr. Herling, had the opinion that there was something, that there a reason that he couldn't explain as to the postponement.

Q. But skulduggery wasn't his word.

[89] The article says Mr. Herling suggested skulduggery. I am asking, since this was a News Review article, not Mr. Herling, I am asking what the News Review meant by "skulduggery"? A. I already told you, it is something amiss.

Q. And that is as far as you will go? A. That is right. Maybe we ought to get the original statement and look at it.

Q. You have had time between the time I took your deposition and now to get the original statement. Did you check back to find out what Mr. Herling had said, which the News Review paraphrased Mr. Herling, saying something Mr. Herling had not said, because Mr. Herling did not use as strong a word as "skulduggery"? A. All I am saying is there "skulduggery" is the word that the reporter used to interpret what Mr. Herling was saying. It was a representative of what she thought was a representative word.

Q. But this was a word which you approved, you permitted to go into the News Review? A. I didn't raise any question on it.

Q. Right.

Now, with reference to the word "blackmail", it says:

". . . fight Bresler's 'blackmail'; . . ."

[90] Was this Mr. Herling's words or was it the News Review's words? Why was the word "blackmail" put in quotes? A. I think it was Mr. Herling's word.

Q. Why wasn't the entire phrase put in quotes, Mr. Herling said "fight Bresler's blackmail" instead of "fight Bresler's 'blackmail'"? A. I couldn't answer that.

Q. Do you know definitely there was a quote from Mr. Herling? A. My understanding it is.

Q. I am not asking you about your understanding. Do you know definitely whether this was a quote from Mr. Herling? A. Yes.

Q. Did you see anything improper in the use of the word as applied to — pertaining to Mr. Bresler's action in the matter? A. This was the opinion of the person that was writing or making this speech. We thought we had every right to let the citizens of Greenbelt know how agitated the people at their meeting were about this particular proposal.

Q. You felt the use of the word "blackmail" was proper description? A. It was a description used by the people, it was their opinion.

Q. Are you saying the use of the word "blackmail" was [91] fair comment as to the discussion that occurred, I mean that the word "blackmail" could fairly be implied as to what was discussed about Mr. Bresler at that meeting? A. Right after that word was used by Mr. Herling we have another quotation from another gentleman, that said he did not think it was blackmail.

Q. That was Mr. Martin? A. Yes.

Q. But you used the word again, "blackmail"? A. Yes.

Q. And this was a week after the other meeting? A. But those statements were made at this meeting.

Q. Do you know whether Mr. Herling used the word at the meeting because he had seen it in the

News Review of the preceding week? A. I wouldn't know that.

Q. Did you check with Mr. Herling to find out why he had used that word? A. No, I didn't. I don't know why he used the word. I assume he may have been at the first meeting, I wouldn't know.

Q. Did you question whether there was fair comment? A. No, I didn't question him.

* * *

[92] Q. But did you question whether the use of the word was fair comment of what happened? A. No, I didn't.

Q. Now there is an editorial on page 2 of that edition. I refer you specifically to the portion of the second paragraph, which says — or let me — the entire sentence.

Well, how about you reading that paragraph, Mr. Skolnik?

THE COURT: Is this still Exhibit 1?

MR. CHASANOW: Exhibit 2, I am sorry.

* * *

BY MR. CHASANOW:

Q. Do you want to read the whole thing, Mr. Skolnik? Who wrote that editorial? A. I wrote the first paragraph of this editorial.

Q. Who wrote the final paragraph? A. You see, we have a five-man editorial board. Anything that goes in like an editorial and the major stories are circulated among whoever the senior members are down there that night. And they are always changing things. We have several English professors and so forth on this Board and they are always changing words around and striking out and so forth.

[93] Q. You studied English? Do you change words around? A. Occasionally, yes.

Q. But you didn't change the word "blackmail", did you? A. No, what word are you talking about? This was a quotation. How would I change it? This is what people said.

Q. All right, do you want to read the entire editorial so you won't be quoted out of context? A. You are not quoting me now. This is an editorial board.

Q. But you wrote the first draft? A. Okay.

Q. Can you read that whole paragraph or the whole thing, whichever, you choose. A. The editorial is entitled "The Limits of Compromise":

"Somehow a few citizens seem to have gotten the impression that the city's own Master Plan adopted by the previous council in March, 1965, is unfair to developers. They ask whether the Master Plan, 1965, is realistic, alleging that it doesn't take into consideration the developers' desires. The city, it is claimed, must be less uncompromising in its attitude toward the development of the vacant land.

"The truth of the matter is that the city's Master Plan already represents a compromise between what the city desires and what the developers desire. [94] But some of the developers are not satisfied with half a loaf; they want the whole loaf, and in a few instances, do not seem to care what methods are used to achieve their goal.

"Let us take, for example, parcels 1 and 2, the 230 acres between GHI property and the Baltimore-Washington Parkway. Originally, Advisory Planning Board members visualized these parcels as being reserved largely for single-family homes. Later the APB compromised by recommending that strips of land closest to the GHI property be reserved for R-30 apartments. Eventually, the city's Master Plan, as finally adopted, called for more acreage in R-30 apartments (63 acres) than in single-family homes (55 acres). Yet, the developer is not satisfied; he wants the entire acreage in R-30 apartments.

"We deny the claims that Greenbelt has not accommodated itself to the needs of the developers and that we must now sit down with the developers and further compromise the Master Plan. We deplore the timorous attitude that says 'we'd better be nice to the developers, because we may need something from them some day.'

"On the contrary, we say that it is time for the developers to grow up to their responsibilities, [95] to accommodate themselves to the wishes of the city

as expressed in the city's Master Plan and community goals, and to stop pressuring the city to accept proposals that are against its interests."

* * *

Q. All right, this time you weren't quoting anybody because you wrote the first paragraph; correct? A. Yes.

Q. All right, tell us what you meant by that phrase, referring to some developers do not seem to care what methods are used to achieve their goal.

[96] First let's see if we are in agreement. Were you are talking about Mr. Bresler and his associates? A. Well, we used, later on, an example. Yes, but the editorial was in general because there were other developers who were also trying to circumvent the Master Plan.

Q. Fine, but let's not quibble. You are talking specifically about Parcels 1 and 2 and specifically about Mr. Bresler and his associates? A. Yes.

Q. Now, tell me what you meant by that phrase, do not seem to care what methods are used to achieve their goal. A. We were reflecting here the attitude that had been expressed at the Council meetings by many people, that this was an improper —

Q. Now forget about Council members or other people's attitudes. You wrote the paragraph, right? A. Right.

Q. What did you mean to convey to the people who read that editorial? A. We meant to convey the fact that we thought it was improper that the developer should use his two sites of land as a lever to get higher density by requesting that the city not object to higher density in exchange for a school that they needed.

Q. What did you mean by the word "methods"? You said — [97] A. Making these offers, these proposals, these proposals or this proposal — which we think was — well, we — I think it was an improper proposal.

Q. Improper in what respect? Morally? A. I am just going to say it is improper, that is all.

Q. You wouldn't qualify it, as morally or legally or otherwise? A. That is right.

Q. How badly improper? A. Well, we thought it was improper enough to warrant an editorial.

Q. All right, and what were you trying to get across to your readers by this phrase, "do not seem to care what methods are used in reaching their goal"? A. What we were really hoping is the developer would reconsider and come around, as the last paragraph said, we really wanted the developer to come to us and work with us and not try to be pressuring the city to do something in exchange for something else. We really wanted — this is a plea to the developer in effect. We are saying let's get together, let's do something and let's not try to squeeze the city.

Q. Are you trying to say, Mr. Skolnik, your plea to the developer, you are asking him to do something, and you are putting it in this language, you don't seem to care what [98] methods you use to achieve your goals? Is this what you determine a plea to the developer? A. This was the middle of the paragraph, middle of the editorial sentence, and the last paragraph said:

"On the contrary, we say that it is time for the developers to grow up to their responsibilities, to accommodate themselves to the wishes of the city as expressed in the city's Master Plan and community goals, and to stop pressuring the city to accept proposals that are against its interests."

That is what we are trying to get across.

* * *

[104] Q. All right, suppose we let the jury read it then.

I show you Plaintiff's Exhibit No. 5 of the Greenbelt News Review for Thursday, May 19, 1966.

* * *

A. This is the letter to the editor entitled "Startled at Bresler."

"To the Editor:

"I wonder if the rest of Greenbelt's residents were as startled as I was to read in Sunday's Washington

papers of Spiro T. Agnew's invitation to Charles Bresler to run as the Republicans candidate for State Comptroller?

"The article in the Star made mention of Mr. Bresler's recent land dealings for the State. I wonder how much is known of his land dealings against this city?

"Mrs. E. S. Ross."

[105] Q. Now what is that heading? A. Startled at Bresler.

Q. Who wrote that? A. I don't know.

Q. Do you know why that phraseology was used? A. It was in the letter.

Q. Member of G.H.I., Mrs. Ross? A. At the time of this letter I do not know Mrs. Ross. You want what she is now? What status do you want her?

Q. Tell us what you know about her. A. At the present she is not G.H.I.

Q. Was she at the time? A. I do not know.

Q. Do you know where she lived? A. You mean at the time of the article whether she was G.H.I?

Q. Yes. A. I do not believe she was a G.H.I. member at that time.

Q. Do you know where she lived? A. At present?

Q. No, where she lived at the time. A. No, I don't know.

[106] Q. Where does she live now? A. She lives at Boxwood Village now.

Q. You don't know where she moved there? A. No. That is right. And I don't know when she moved into Boxwood Village.

Q. I see. Member of CFPG? A. Yes.

Q. Steering Committee? A. I think she is now a member of the steering committee, but I don't know whether she was at that time.

* * *

[111] Q. Now I refer you to Plaintiff's Exhibit 6, the article entitled:

"Charles Bresler to Run for State Comptroller."

I refer you specifically to this paragraph which I am pointing to.

Plaintiff's Exhibit 6 is dated Thursday, June 9, 1966. Would you read that paragraph to the jury? A. Reportedly, a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards."

Q. Do you recall my asking you at the deposition to identify those legal proceedings? Name, number of cases, where filed, and so forth? Would you tell the Court now what legal proceedings were filed against Mr. Bresler? A. There is nothing in the statement about filing legal proceedings.

Q. Have started legal proceedings. A. Yes.

Q. Let's confine ourselves to that language. A. That is right.

Q. Give us the name of the case, the name of the plaintiff, the court which filed, the date in which filed. [112] A. Well, I didn't write this statement but I can tell you what I thought it meant when I reviewed it.

Q. You reviewed it? A. Yes, I did.

Q. Now what does starting legal proceedings mean to you? A. It meant to me that these persons had consulted their lawyers, that is what it meant to me, they had consulted their lawyers for filing official complaints and were asking their lawyers to take whatever legal action is necessary to see that their homes were brought up to snuff.

Q. Mr. Skolnik, you have three degrees. Are you saying that started legal proceedings means something different than started legal proceedings? That they had consulted lawyers? A. I think that is the way most people would interpret that statement.

Q. What do you mean by legal proceedings? A. The apparatus. You go to a lawyer, the lawyer says well we will try this way, we will try to work it out with —

Q. Are you trying to tell this Court if the lawyer doesn't tell you you don't have a case that is starting legal proceedings? A. Yes, I would think so, the whole apparatus.

* * *

[114] Q. What did you intend to mean when you conveyed "starting legal proceedings"? A. I think what we had intended to point out here is a lot of homeowners had problems with their houses and a number of problems were not being resolved and they are going to consult lawyers and so forth.

* * *

[118] Q. Mr. Skolnik, there was another article in here. Oh, yes, in the same article.

Make sure I quote correctly.

"The City also resorted to legal action early in the construction of Boxwood Village because drainage problems in the development caused damages in the Lakewood subdivision."

Now that refers to Mr. Bresler; correct? A. In the context I would think so, yes.

* * *

[119] Q. Isn't it true that that suit was against, not against Mr. Bresler, against two corporations? A. It was against Boxwood Village.

Q. And Ivy Homes, weren't they, the two defendants in this very courthouse? A. My recollection was that it is so.

* * *

Q. Did your paper report that Boxwood Village, in which Mr. Bresler had a minority interest and Ivy Homes, being the two — Ivy Homes being the corporation which Mr. Bresler had no interest in, the case was dismissed to Boxwood Village because the complaints they were talking [120] about were addressed to Ivy Homes and there was a consent judgment entered against Ivy Homes. Did your paper report that? A. I can't recall.

* * *

Q. But isn't it true that the statement with reference to suit or any legal action against Mr. Bresler was untrue, that he had nothing to do with that situation? Did your paper infer or has it ever published the fact that Mr. Bresler had nothing to do with it and that the Court, this Court, dismissed that suit as to the corporation? A. We had no knowledge that

this suit had nothing to do with Mr. Bresler. This is the truth as we know it at the time.

Q. Isn't it a fact your reporter was present in the [121] courtroom, just as your reporter would have been been present every time a case involving Mr. Bresler ever come up here? A. There was no reporter —

* * *

Q. You don't think it is a true statement that your reporters were present in court the day that case was argued? A. Could you show me a paper? Is there a by-line?

Q. You have it. [122] A. You have to show me a paper. I don't know what you are talking about.

Q. How can I show you a retraction of a false statement that was never published in your paper? Did you ever publish a statement that the case was tried and that Mr. Bresler was determined to be involved in no way at all because the damage had been done by Ivy Homes, Inc., with which he had no relation and that Mr. Bresler neither directly or indirectly was involved in this thing with which you linked his name? Did you ever follow up until you could give the readers a true picture? A. I have no knowledge of the outcome of that case, except you say it was in the newspaper. I would have to see it in the newspaper.

Right now I don't have any knowledge of it.

Q. Wasn't it true you were no longer interested because Mr. Bresler was no longer the culprit in that case? A. My understanding, he was involved. I think we have evidence to show that.

Q. What evidence? That he was involved in Boxwood Village? What evidence? A. Boxwood Village.

Q. That was Ivy Homes. You are aware the Court determined by the admission of Ivy Homes it was the sole person that — of damage, to this case that you spoke was [123] Mr. Bresler? A. No, I don't know that.

Q. You never checked in your paper? Did you ever follow up to see what happened in that case? A. No, we did not.

Q. When did you lose interest in the case, when Mr. Bresler's corporation was exonerated or before? A. My understanding was the case was settled. That is all I remember.

* * *

[124] Q. Incidentally, who wrote that article [Plaintiff's Ex. 6] Mr. Skolnik? A. That was a joint article.

Q. Joint by whom? A. I wrote some of it and my wife wrote some of it.

Q. Do you know which part you wrote or which part your wife wrote? A. My wife wrote that paragraph starting "reportedly".

* * *

Q. Did you talk with your wife about who had filed suit? Did you ask her? A. At that time?

Q. Yes. [125] A. Well, I don't remember whether I talked to the individual about it, the individual involved.

Q. You didn't question that paragraph where she said:

"Reportedly, a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings —" A. Yes, she said she had attended a meeting, CFPG meeting in which about fifteen to twenty homeowners from Boxwood Village came into the meeting and wanted to have their complaints against the —

Q. Wait a minute, we are not talking about complaints. We are talking about legal proceedings. Let's just stick to legal proceedings. A. Wanted to air their — air their complaints about construction.

At the conclusion of the meeting — this was not an item on the agenda. At the conclusion of the meeting they congregated and started talking about their individual problems.

Q. Now let's not have anymore self-serving declarations, Mr. Skolnik. First of all what did Citizens for a Planned Greenbelt or planning of Greenbelt have to do with complaints of constructions? A. That is what the chairman said. It said it doesn't

have anything to do with it and he said they wouldn't discuss [126] it.

Q. Fine. So despite the fact the chairman said she wouldn't discuss it you put an article in your paper about legal proceedings. A. After the meeting was adjourned these citizens, very excitable, they felt they had legitimate complaints, they congregated around and they started talking about their individual complaints and they — some of them said —

Q. Were you present? A. No, I was not present.

Q. This is just hearsay? A. From —

Q. Tell us what you know, not what you heard. What do you know about suits which were filed? A. About suits?

Q. Yes. A. No, I don't know anything about suits. All I know is that people were complaining about the fact that they were having troubles —

Q. But that isn't what your article said. Your article doesn't say a word about complaints. It says legal proceedings: A. Well, that covers complaints.

Q. Oh, I see. You consider — A. They were complaining to their lawyers and complaining [127] to —

Q. You consider complaints and legal proceedings to be synonymous? A. I say legal proceedings include complaints.

Q. Do complaints include legal proceedings? A. I would think so.

Q. So as far as you were concerned there was no need to refine the language, you are satisfied that the words "started legal proceedings" was a proper description that people had been griping about their homes? A. It was a proper description that people were going to their lawyers in bunches and filing proceedings about their houses. I think so.

Q. Let's go on, Mr. Skolnik.

Referring to Plaintiff's Exhibit No. 7, the Greenbelt News Review dated Thursday, June 30th, 1966, the article entitled "G.H.I. Files Suit Against School Board; Bresler Influence Cited."

Who wrote that article? A. The article?

Q. Yes. A. The article was based on the suit that was filed and I took it from —

Q. Who wrote the article? A. I wrote the article.

* * *

[128] Q. And the last — would you read to the Court the last paragraph, that article? A. "The Chairman of the County School Board is W. Carroll Beatty, who is a director of the Suburban Trust Company which has held the mortgages on much of Bresler's properties in Greenbelt. The County School Board attorney is Paul Nussbaum, who is on the Suburban Trust Company's Advisory Committee.

Q. Now what were you trying to convey to your readers in that paragraph by referring to Mr. Beatty and Mr. Nussbaum? A. There was a suit against the Prince George's County Board of Education. Mr. Beatty was the President of the County Board of Education and the Chief Attorney was —

Q. Suit by whom? A. This is a suit by Greenbelt Homes, Inc.

Q. Not against Mr. Bresler though, against the School Board? A. Yes.

* * *

[129] Q. Did you ever talk to Mr. Beatty to find out what influence his position with Suburban Trust Company might have had with respect to his duties? A. This doesn't —

Q. With respect to the Board of Education. A. This doesn't talk about influence. The influence was referring to the paragraph in the suit.

* * *

Q. Where does Mr. Bresler's influence enter into a suit by G.H.I. against the Board of Education? A. This is a direct quotation. It is a quotation from the suit which said that charged that the School Board was influenced by consideration other than the public interest and by the pressures and influence which the developers, Charles Bresler, Theodore Lerner and Associates, were able [130] to assert by reason of

their ownership of both lots, Parcles 2 and 15. This goes back to the earlier articles on the school site.

* * *

Q. We won't debate the point.

Now what is the purpose in bringing in Mr. Beatty's name and Mr. Nussbaum's name? A. Because Mr. Beatty was a President of the County School Board and Mr. Nussbaum was the Chief Attorney.

* * *

[131] Q. Your article purports to be a report of the suit. What prompted you to throw in the names of Mr. Beatty, who is an attorney, and Mr. Nussbaum, who is an attorney, in connection with a lawsuit that you are reporting on, in which their names are not mentioned? A. This we felt was an interesting background bit of information relating to the principals involved in the suit, which is the County Board of Education. These are factual statements. There is no dispute about the facts.

* * *

[132] Q. Was Mr. Beatty named as a party in the suit? A. No, not that I know of.

Q. Was Mr. Nussbaum named as a party to the suit? A. Not that I know of.

* * *

Q. What are you trying to infer? You say background information. How far do you go on your background information? Why mention their names in connection with Mr. Bresler and Suburban Trust Company? A. Well, all I could say is these gentlemen were in [133] very strong policy-making positions and we knew that.

Q. And were you trying to infer that Mr. Bresler used his influence with members of the School Board or that they were corrupted by the fact that Mr. Bresler had mortgages with Suburban Trust Company? A. We thought it would be of interest to our readers to know of the relationships.

Q. What kind of interest? Were you inferring corruption on their part in using their position to further Mr. Bresler's influence because of the fact

Suburban Trust Company had mortgages on their property? A. We weren't inferring, we were just giving the facts.

* * *

[135] (News Review dated April 22, 1965 heretofor marked for identification Plaintiff's Exhibit No. 8 was received in evidence.)

BY MR. CHASANOW:

Q. Now in the first column you have an item on the: [136] "CITIZENS FOR A PLANNED GREENBELT ORGANIZE CITYWIDE MEMBERSHIP DRIVE."

That is the CFPG we are talking about, right? A. Yes.

Q. And Mr. Charles F. Schwan, Jr., was President of the Membership Committee named in the article; correct? A. Yes.

Q. This was known as the CFPG Steering Committee? A. Yes.

Q. And your wife was a member of the committee at that time? A. Yes.

Q. And you were a member? You were a member at that time? A. Not the Steering Committee.

Q. No, but you were a member of CFPG.

Mr. Schwan, who was President, was the same president of the G.H.I.; correct? A. Yes.

* * *

[140] Q. Now, Mr. Skolnik, isn't it a fact that your newspaper reported back in 1963 that the ground you were talking about involved in its alleged suit against Mr. Bresler, had been sold by Boxwood Village to Ivy Homes, Incorporated? A. There was a report given at the City Council meeting. Suit was against Ivy Homes —

Q. You testified earlier, when you reviewed an article, if you knew it to be wrong you corrected it. From your own knowledge or from your files. Your files contained a record of this in your own paper, that Boxwood Village had sold that ground in 1963, two years before this, to Ivy Homes, so that Boxwood Village was not concerned in any way with that suit.

Your files had that information. Did you correct the information? A. I did not know of that specific transaction. This suit is against both Ivy Homes and Boxwood Village.

And we knew that Bresler was involved because the City Council told us, the City Council said their suit was against Mr. Bresler.

* * *

[141] Q. Isn't it a fact it was not a suit against Mr. Bresler? A. Well, my understanding is Boxwood Village is represented by Mr. Bresler.

Q. Just now a moment — if you are talking about a suit against Boxwood Village, do you know what the percentage of Mr. Bresler's interest is in Boxwood Village? A. All I know is that as far as everybody who came up before the City Council and talked, it was everybody's understanding that Mr. Bresler was the chief representative of Boxwood Village, whether the City had any complaints about drainage who did they go to, they went to Mr. Bresler, they were always to Mr. Bresler and Mr. Bresler replied to those letters.

* * *

[142] Q. Isn't it a fact you published a false report which your own files indicated was false? A. We had no knowledge that there was a false report. We didn't check any record for incidental item that was maybe — I don't know whether there was any. You show me the item. Even if you do if it was something written two years ago in a small little paragraph somewheres.

Q. Haven't you written some articles about Mr. Bresler in which you have gone back further than two years on your research? A. This was not a research article, this was a report of the City Council meeting. We have a deadline to make and we report just what was said at the City Council.

Q. Who wrote the article? A. I wrote it.

Q. You didn't check the suit, though? A. No.

Q. So you had no way of knowing whether or not Mr. Bresler was — A. No reason to doubt that this was not the facts that we had cited.

* * *

[147] THE COURT: Mr. Reich, I would make one observation to you: Nobody excuses a witness from trial except this member of the Court, by my approval. Now I realize what we are confronted with here, but I would just say to all parties involved, the rule is on the witnesses.

I don't know how, except for the integrity of the people involved, there be no discussion of the testimony that has been produced in this case up to this time and the Court observes that Mrs. Skolnik is one of the prospective witnesses I presume.

* * *

January 4, 1968

* * *

[159] Q. Now did that article [Plaintiff's Exhibit 6] say anything about construction defects by Charles Burton Builders or Boxwood Village? Why did you use the word "Bresler"? A. At this meeting, about ten or fifteen citizens, or homeowners, came down —

Q. Just answer my question directly. You have related [160] four cases, two against Charles Burton Builders and two against Boxwood Village; correct? A. Right.

Q. Why didn't you say in the article Charles Burton Builders, Boxwood Village? Why did you say Mr. Bresler? A. Because the persons who were there said that they were interested — that they were concerned about their problems and they were having problems getting Mr. Bresler to rectify their construction defects. And that is why they were down at this meeting. And they used Mr. Bresler's name, not Charles Burton or Boxwood Village.

Q. Mr. Skolnik, have you ever reported any complaints by other owners on Lakeside, including myself, against the builder who built my house? Have you reported these in the News Review? A. This was a group of ten to fifteen people that were there, not isolated cases, and these complaints we have been hearing all along, but it never got to a point where fifteen or twenty people — ten or fifteen people came down to a meeting.

Q. Isn't it a fact that at one of the meetings of CFPG the group solicited complaints specifically Doctor Stern, thought that they ought to hear complaints from people against Mr. Bresler? Did you learn of that meeting? A. I wasn't at the meeting.

[161] Q. You reported it in the newspaper, didn't you? A. I don't believe so.

Q. You don't recall reporting that in the newspaper? A. I believe so — I didn't report it.

Q. If you remember it was published in the newspaper, an article about CFPG. I am sorry, I am sorry, correction. Correction. I am talking now about the answers to interrogatories which you filed under oath. A. That is right. That is right.

Q. Let's refer to that.

On page 7 of your answer to interrogatories, this is your statement under oath:

"Doctor Stern further recalls remarking at the June 7, 1966 meeting of CFPG that he thought CFPG should hear from the citizens who had come to the meeting to air complaints regarding construction defects in the Boxwood and Lakecrest developments."

Now you had scratched out "Lakecrest". A. Yes, that is what Doctor Stern told us.

* * *

[162] Q. You deleted "Lakecrest".

But now you have brought two in on Lakecrest. Why was it deleted then? A. Because this referred to this one meeting of June 7th and we found out that the Lakecrest people were not at that meeting in — making those complaints. This was a Boxwood group that came down.

[163] Q. So who solicited the Lakecrest group to make complaints? A. Solicited?

Q. Yes. A. I don't think you need any solicitation from those people to make complaints.

Q. Who made it known? A. Because they were making it known at CFPG and City Council meetings.

Q. When did you get this information from the Lakecrest people? A. It is in the interrogatories.

Q. I am asking you now. A. Okay.

Now I wasn't at these meetings as I said before.

Q. Your wife was on the Steering Committee, though, she was there. A. That is right.

Q. And she told you about them? A. In connection with the interrogatories she told me that at earlier meetings Mr. Foley had complained about the fact that construction was not up to the county standards and that he had actually filed a suit at that time. The other people had either — at earlier meetings or some occasion, that is what my wife said, had some occasions had mentioned [164] to her in the course of meeting or somewhere along the lines, that they had also had problems and were going to meet with the County Commissioners and try to get a solution to the problem.

* * *

[168] Q. Let's identify Mr. Geller.

Member of G.H.I.? A. No.

Q. Member of CFPG? A. Yes.

Q. On the Steering Committee? A. Yes.

Q. Has he been associated with News Review? A. No.

Q. Friend? A. Yes.

* * *

[179] Q. Now there is another article on page 1 of that issue, column 1, [Plaintiff Exhibit 11, dated June 16, 1966] at the bottom, CFPG Drive Launched. That refers to the Steering Committee of CFPG assisting in the collection of funds earmarked specifically for legal fees. Would you read that first paragraph, Mr. Skolnik? [180] A. Sure.

"In conjunction with its annual membership drive, the Steering Committee of the Citizens For a Planned Greenbelt will assist in the collection of funds earmarked specifically for legal fees. Citizen suits are now being prepared in connection with an eight-story high rise apartment on Charlestowne-Village acreage and other actions of developers which are contrary to the Greenbelt Master Plan."

Q. Your wife was one of the leaders of that drive, was she not, as a — as a member of the Steering

Committee of CFPG? A. She is a member of the Steering Committee but I don't think she had anything or much to do with the drive for legal fees.

Q. You gave that drive publicity, didn't you? A. That was a news release that came in from CFPG and we ran it as like any other civic organization running a fund drive.

Q. You said it came from CFPG. It came from your wife, who was on the Steering Committee of CFPG, didn't it?

Since your wife was on the Steering Committee, who, except your wife, would have delivered the information to you? A. No, I think Mr. Siegal was writing these press [181] releases at the time.

Q. With any help from you or your wife? A. Well, we edited anything that comes to the News Review.

Q. So you helped Mr. Siegal prepare it? A. No, I said we edit it. You know press releases have to be edited. Sometimes they get awful expansive, they build up their organization and so on. Sometimes they get awful — they use a lot of adjectives and that sort of thing.

Q. So you mean you do make changes? A. Well, sure.

Q. You don't present them verbatim exactly as presented? A. I doubt — I don't think we do it very frequently anyhow.

* * *

[182] Q. All right, now, did you and your wife assist in any way in the collection of these legal funds? A. I don't recall any activity in that respect.

* * *

Q. But you did publish several articles, saying CFPG was soliciting funds and you put telephone numbers in. A. Oh, yes, sir. It was in the release.

Q. Whose telephone numbers? A. Well, let's see, there is 474-6666, 474-6323 and 474-6060.

[183] The latter number is my wife's number.

Q. But you didn't identify it as being your wife's number. Well, your number too, as well as your wife's.

You don't have separate telephones? A. That is right.

* * *

[184] Q. Did you have anything to do with the articles published soliciting legal funds for CFPG for the financing of suits against Mr. Bresler? A. I don't recall, I would have to see the articles.

Q. I have asked you this question several times. Do you know by now whether you have or haven't? A. I don't recall looking at these articles before they were published. I may have seen one of them. Apparently there was more than one and you are asking me specifically about this particular article. I can't recall whether I had seen it before.

Q. It had your telephone number. Weren't you interested in whether somebody, someone was publishing your telephone number saying if you want to contribute to this legal fund call this number? A. I didn't see it, that is what I am trying to say.

Q. You say your wife did this without your knowledge? A. I don't know who put the number down, it may have been Mr. Siegal who put the number down.

Q. He didn't discuss the fact with you that people would be calling you? A. No, he did not discuss with me.

Q. He didn't call you to say Mrs. Skolnik may not be [185] home, would you call and arrange to accept the money? A. No, no.

Q. He did this without your knowledge? A. Without my personal knowledge.

Q. You have mentioned Mr. Siegal. That is Harold Siegal? A. Harold Siegal.

Q. He is not a member of G.H.I., is he? A. No.

Q. But he is a member of CFPG? A. Yes.

Q. In fact, he was President, wasn't he? A. Yes.

Q. Let's call him President.

Did he ever work on the News Review? A. No.

Q. Friend of yours? A. Yes.

Q. Now is it the duty of a newspaper, is it one of the duties or responsibilities to solicit funds for the institution of suits? A. I don't think so.

Q. But you did in this case? A. No.

solicited funds, although you didn't mention her name, but you did advertise the fact funds were being collected for that purpose? A. This was an advertisement, it may have been.

Q. What did CFPG have to do with advertisements of funds for suits against Mr. Bresler? A. I thought the first paragraph was self-explanatory.

Q. Explain to me, Mr. Skolnik. A. The Citizens For a Planned Greenbelt is an organization that comprises 650 members. It —

Q. Let's go back. It comprises 650 members. How do you become a member of CFPG? Do you file an application? A. You file a dollar application fee, right.

Q. You pay a dollar; right? A. Right.

Q. Do you have to be investigated for membership? A. I should hope not.

Q. Do you have to be voted on for membership? A. No.

* * *

[188] Q. So all you do is pay a buck if somebody knocking at your door.

Let me ask you this, Mr. Skolnik. Isn't it a fact that if a neighbor comes knocking at your door and says give me a buck to help save Greenbelt it would be unpleasant for him if he didn't contribute that dollar? A. Well — all right, if you want to make that [189] presumption, yes, I suppose so.

Q. So this really isn't a completely voluntary organization? A. Oh, I think so.

Q. It is open to everybody? A. That is right.

* * *

Q. Now that suit mentions — read what the purpose of the suit is, as outlined in that article. A. "In conjunction with its annual membership drive the Steering Committee of the Citizens for a Planned Greenbelt will assist in the collection of funds earmarked specifically for legal fees. Citizen suits are now being prepared in connection with an eight-story high rise apartment on Charlestowne-Village acreage and other actions of the developers which are contrary to the Greenbelt Master Plan."

Q. What kind of suit did that article contemplate or intend to convey to the reader? What was the purpose of the suit? A. This article isn't complete.

Q. You edited it. I thought you edited it to make sure it was factually complete. A. I said I have no recollection of seeing this [190] article before it was published.

Q. You said you had no responsibility for it before you didn't see it. A. Said I had no recollection of seeing this particular article.

Q. Isn't it a fact you, as the President of that corporation, or that newspaper, did have the responsibility for the content of that article? A. I think the publisher has a responsibility for all articles, if you want to put it that way.

* * *

[194] Q. So what did the Mayor say? A. The Mayor said he thought it would be a good idea if there was supplementation of the City's suit because just to avoid the possibility that the Court might feel the City of Greenbelt had no legal standing. That is what he told the citizens.

Q. That was the only reason? A. His reason. That is what I recall he said.

Q. He gave no other reason? [195] A. As far as I can remember.

Q. What about the rest of the group that were there? Was there any comment about opening up a second front on Bresler? A. I don't recall what they said specifically.

Q. Will you search your memory for what else was said about another suit against Bresler? A. They were concerned about this high rise apartment that was being constructed right opposite their single-family homes.

Q. All right, this was supposed to be a companion suit then to supplement the City suit for injunction against Mr. Bresler? A. That is right.

Q. So it was supposedly an injunction suit then, was it not, a suit in equity, for citizens to restrain him? A. That was my understanding, a suit to enjoin construction of further —

Q. Fine, any other purpose in bringing the suit? A. Not that I know of.

* * *

[196] Q. Your wife was a member of the Steering Committee of CFPG who collected these funds; right? A. Yes.

Q. I am sure that she had some discussions about who was going to file the suits, how it was going to be filed, who was going to be paid for it and who the lawyer was going to be. Did she ever discuss this with you? A. No, she didn't discuss any such details with me.

Q. Weren't you interested as a member of CFPG and what the money was going to be used for? A. She told me that there was going to be some citizen filing suit. That is what she said.

Q. Did she say which citizens were going to file suit? A. I don't recall any names.

Q. Did she say whether they had solicited anybody to file suit? A. I don't recall any such discussion.

Q. Do you remember any discussion with your wife about it? A. I don't remember any specific details.

* * *

[197] Q. All right; now, a suit was filed, was it not? A. Subsequently.

Q. Was that an injunction suit? A. It is around somewheres, we can look at it.

Q. I have asked this question several times. You have had a chance to check. You have read the suit, haven't you? A. Yes, I have read the suit.

Q. Is it a suit at law; is it not? A. I haven't the suit in front of me. You show me the suit and I can answer your questions. You are asking me legal terminology again.

* * *

[198] Q. Isn't it a fact that suit is asking for damages? A. When I saw —

Q. These people are asking for damages? A. Which people?

Q. The people who became plaintiffs in that suit.

A. Yes. When we saw the suit, when we got the suit, after it was filed, we wrote up an article discussing the suit, explaining the suit, and it included a request for monetary damages as I recall, in addition to enjoining construction on the high rise.

Q. But the main purpose of the suit was damages, not the injunction; is that correct? A. I don't get that interpretation.

Q. It was a suit in law, not equity, wasn't it? A. That didn't mean a thing to me.

* * *

[199] Q. Show me anything in the article to show this was going to be money to be used for suit by damages — for damages by individuals. A. I don't see anything like this and I didn't know there was anything like that. I didn't know there was any monetary damages involved until I saw the suit.

Q. Didn't you check for something your paper was advertising and soliciting funds for? A. There was a press release and I knew in general a suit was going to be filed by citizens. That much I knew. There was nothing to check. I knew what it was in connection with. There was nothing further to check here.

Q. Why was your paper so interested that it published press releases for the filing of a suit? A. This was a major public issue in the city.

Q. The filing of a suit? A. No, the major public issue was the violation of covenants. The City was in an uproar about that business, they came storming down to the City Council meeting and wanted to know what the City Council was going to do about it and City Council said, well, we are going to file a suit [200] and people were still not satisfied.

Is the suit going to restrain construction or isn't it?

And the City said well, they couldn't get a temporary injunction or something, they are really very confused about what the suit would do. And they said, is there anything we can do to supplement and help the City?

And then Mayor Smith said, well, I think another suit to make sure that we have —

Q. Who is "we"? In other words, you are asking the City what else you could do? A. No, not me.

Q. You said "we". What did you mean by "we"? A. Did I say "we"? I thought I said the citizens.

Q. I am sorry, if I am mistaken, I will apologize. What do the notes say?

(Record read.)

THE WITNESS: The "we" referred Smith. I thought the "we" referred to Mayor Smith's statement.

* * *

[202] Q. Now, Mr. Skolnik, having permitted your paper to be used for a press release soliciting funds for the filing of a suit against Mr. Bresler, which was intended to join in the injunction filed by the City to restrain them from building the eight-story apartment, did your paper or you follow up to be sure that those funds were used for the specific purpose, which was alleged in the article on the front page? A. No, we didn't follow up that.

Q. Did you feel that you had any responsibility to [203] be sure that this money was used for the purpose for which you were assisting in the collection? A. The word "assisting" I take exception to. We were publishing a news release, but aside from that the suit did finally, as filed, ask for restraint of construction.

* * *

[206] Q. Mr. Skolnik, we just finished talking about the article, your statement of CFPG on June 16th. I refer you to an article on page 1, the issue dated July 7, 1966, which is headed "CFPG Drive Underway".

Would you read that to the Court, please? [207] A. "The door-to-door membership and legal fund drive conducted by the Citizens for Planned Greenbelt is underway. Over forty volunteers are already visiting their neighbors for the twofold purpose of gaining memberships and collecting funds intended to support legal action to maintain the garden-city character of Greenbelt and to help realize the City's

Master Plan. Citizen suits will be filed shortly in connection with an eight-story high rise apartment on Charlestowne-Village acreage and other actions of developers which are contrary to the Greenbelt Master Plan.

"To carry out its current drive, CFPG needs the assistance of all Greenbelters. Call 474-6666, 474-6060. The next meeting of the Steering Committee will be Tuesday, July 12 at 8:00 p.m. in the Municipal Building. Everyone is invited."

Q. The telephone numbers do not indicate the names of the person. Who were these people to be called? A. I don't know the other number. I just don't know the other number. One of the numbers is my wife's number.

Q. Did you see that article before it was published? A. I can't be sure.

Q. But in the meantime between that article and the previous one you had seen the previous one by that time? [208] A. Yes, because — well if it was printed in the News Review I must have seen it afterwards.

Q. You read your own paper? A. Yes.

Q. You knew there had been a previous article. Did you question the publication of another article for the drive of collection of legal funds to be used to file suit against Mr. Bresler? A. Did I question it?

Q. Yes. A. No, this seemed to be a perfectly proper civic function for this group to perform.

Q. Was it because your wife was one of the persons involved or was it for other reasons? A. I think the whole editorial board of the News Review saw nothing wrong with this article being published.

Q. Was this discussed before — A. I don't recall any particular discussion. Whoever is down at the News Review office on Tuesday night reviews these articles and I don't recall any specific discussion.

Q. So everybody on the News Review approved this? A. I don't know anyone who raised any question about it.

Q. Isn't it a fact that in addition to approving this several members of the News Review contributed

their [209] funds to file suit against Mr. Bresler? A. Yes, that is my understanding.

* * *

Q. Answer to Interrogatory No. 5.

All right, would you read that answer? A. Sure.

"The News Review reported upon a CFPG door-to-door fund-raising campaign for contributions to the legal fund of CFPG referred to in '4' above in its issues of June 16, 23 and July 7, 1966 and had an editorial on CFPG's activities in the June 23, 1966 issue.

[210] "Dorothy Sucher, Mary Lou Williamson, Mary Smith and Doctor Sidney Kastner believe that they as individuals made nominal contributions (approximately $1-$5) during this campaign. On information and belief, monies from said fund have been used in part at least to support an action by interested citizens based upon the covenants and the agreement between plaintiff, his wife and the City, i.e., Dennis et al versus Bresler et al."

Q. Mr. Skolnik, you said based on the covenants. What was the date you swore to this? A. The date? This is — what is it, March 27th?

Q. When were the suits filed, prior to that time? A. Yes.

Q. My mention in your answer to my interrogatory under oath about there being or suits based on the covenants, any mention made about a suit for damages? A. The suit based on damages was a subsidiary part of the City's as far as everybody on the — well, as far as everybody —

Q. Mr. Skolnik, when you are asked a question under oath, you are asked for a complete answer; are you not? A. I tell the —

Q. You volunteered this information about based on [211] the covenants, didn't you? That wasn't in response to the question. A. I was trying to give a complete picture —

Q. Fine. You were trying to give a complete a picture as possible. Now you said covenants. Now wasn't there another part of the suit you didn't give, and that is suit for damages?

* * *

[213] Q. When we recessed we were talking about the suits that have been filed against Mr. Bresler. I think as you described it breach of covenant.

I show you Civil Action or Law No. 30,101 filed [214] in the Circuit Court for the Prince George's County on July 18, 1966. Is that the case you are referring to? A. I believe so. Is that the original suit filed?

Q. Go ahead and take a look at it. A. Do you know where the original document is?

Q. Yes, I will get that for you.

On page 8 you said:

"On information and belief, monies from said fund have been used in part at least to support an action by interested citizens based upon the covenants and the agreement between plaintiff, his wife and the City."

Now is that the same case we are talking about? A. Yes, I believe so, but I am still looking for it.

* * *

[215] Q. Who are the defendants? A. The defendants are Charles Bresler, Fleur Bresler, Abraham Chasanow, Home Indemnity Company and Charles Burton Builders.

Q. Now I am going to refer to portions of this, which you may feel free to refer to other portions or read in its entirety. Now on Count 1 would you read the final paragraph in which the plaintiff asked for relief and would you do the same as to each of the subsequent counts? A. I just want to identify this title. It is Declaration of Injunctive Relief and this is Count 1.

* * *

[216] Q. Fine, the last paragraph of each count, what really is asked for by the plaintiff? A. This is Count 2, you said Count 1 is out; is that right?

Q. Right. A. "WHEREFORE, the premises considered, the plaintiffs each pray for judgment in his or her favor against the defendant, Home Indemnity Company, in the sum of five thousand dollars ($5,000.00), as to each plaintiff, together with such other and further relief as the nature of the case may re-

quire and which to the Court should appear just [217] and proper."

Q. All right, the next one. A. "WHEREFORE, the premises considered, the plaintiffs, Louise Dennis, Virginia L. Schuldiner and Sigmund Schuldiner, Ide Roy Lane, Jr. and Barbara R. Lane, Joseph E. Rosetti and Pricilla E. Rosetti, Raymond J. Hibbs and Shirley M. Hibbs, and Roland Dreher and Dorothy Dreher each pray for judgment against the defendants in the sum of fifteen thousand dollars compensatory damages and one hundred fifty thousand dollars punitive damage as to each plaintiff, together with such other and further relief as the nature of the case may require which to the Court should appear just and proper. * * *"

Q. All right. A. "In addition thereto, plaintiffs pray that this Court issue an injunction requiring the defendants to fulfill the promises made to plaintiffs in that the property promised to be park land be declared to forever remain park land, and the defendants be enjoined from building theron and that said injunction run with the land, and that the property which the defendants promised would be developed only at the rate of [218] seven units per acre be the subject of an injunction against the defendants requiring that they develop said property in such manner and that said injunction run with the land."

Count 4.

"WHEREFORE, the premises considered, the plaintiffs each demand judgment against the defendant Home Indemnity Company in the sum of five thousand dollars, together with such other and further relief as the nature of the case may require and which to the Court should appear just and proper."

* * *

Q. This is the same suit though that we are talking about which was mentioned on the front page of the News Review, that CFPG was collecting money for; right? A. That is my understanding, yes.

Q. Then were you aware of the fact this was a suit for damages in addition? A. When I remember the suit, yes, I was aware of it.

Q. Did you report that in the paper? [219] A. Yes.

* * *

[228] Q. Mr. Skolnik, I show you Plaintiff's Exhibit No. 17, Greenbelt News Review dated Thursday, May 31, 1962. Now there has been some testimony yesterday about who the owners of these parcels were in addition to Mr. Bresler, who had purchased them, and you were not sure at the time. I believe you said you didn't know. A. I have forgotten which acres we were talking about, but go ahead.

Q. Who wrote that article, "Bresler Buys More [229] Greenbelt Property"? A. This was written, you realize, five years ago, five and a half years ago.

Q. Yes, sir. A. I wouldn't know who wrote it, but — do you want me to say I am responsible for it?

Q. Right. A. All right, now do you want me to read it?

Q. Yes. A. "Bresler Buys More Greenbelt Property.

"Charles Bresler, together with two partners, Ted N. Lerner and Isadore Gudelsky, Tuesday concluded arrangements with Webb and Knapp to purchase tracts 1, 2, 3, 4, 5, 7, 11, 12, and the balance of 15. Martin and Garvin are retaining tracts 6, 8, 9, 10, and 13. Just before the News Review went to press, Mayor White announced that Bresler will make an informal presentation to the City Council next Monday night concerning his development plans for the vacant land."

Q. So you did know back in 1962 who the purchasers of 1 and 2 and part of 15 were? A. You mean did I know personally?

Q. Yes. Were you on the News Review at that time? A. Yes, I was on the News Review.

[230] Q. Why did you feature Bresler's name instead of the names of others? A. At this point in time, May 31, 1962?

Q. Yes. A. Mr. Bresler was a big property owner in Greenbelt already at that time. He just bought the 50 acre Charlestowne tract. There had been several stories that had discussed the covenants being

worked out with the City. There were a series of three or four public meetings on this subject and Mr. Bresler had been interviewed by the News Review, and we played up the fact that he was going to produce a nice modern development and his was already was a well known name in Greenbelt.

Now Mr. Lerner and Mr. Gudelsky, they didn't mean anything to the public at that time.

Q. Are you saying Mr. Gudelsky didn't own more land than Mr. Bresler did? A. In Greenbelt I think that is right.

Q. How about Mr. Lerner? A. I don't think Mr. Lerner's name meant anything to the public at that time in Greenbelt.

* * *

[239] Q. Mr. Skolnik, I think you have described yourself as just a member of CFPG. Were you one of the leaders of CFPG, one of the people who were actively in promoting CFPG or just a member? A. When CFPG was organized I was quite interested in seeing that it got off to a proper basis.

Q. What do you mean by that? A. I meant that I wanted to see that the goals and objectives of the organization were explained to people and that people understood what it was all about.

Q. I refer you to Plaintiff's Exhibit No. 19, Greenbelt News Review dated Thursday, May 16, 1965, and in particular the article entitled "Delegates from CFPG Tell County Commissioners of Hopes for Area".

Do you know who wrote that article? A. No, I don't know who wrote it specifically. I think it was based primarily on a statement that was made by CFPG that was printed — yes, statement of CFPG.

[240] Q. Now would you read the first two paragraphs of that article? A. Okay.

"In an atmosphere free of acrimony, the Citizens for a Planned Greenbelt had its long-sought-for audience with the Board of County Commissioners on Friday morning, May 7, at Hyattsville.

"County Commissioner Chairman Jessie S. Baggett cordially greeted Lloyd L. Moore, Chairman of

the CFPG's steering committee, who made the groups presentation. Moore was accompanied by a delegation from Greenbelt, including Mayor Edgar L. Smith; Charles Schwan, G.H.I. President; Harvey Geller, Chairman of Greenbelt's Advisory Planning Board; and Alfred Skolnik, President of the Greenbelt News Review."

Q. So the word "delegate" that was used in the headline would include you as a delegate of CFPG? A. Yes, I was asked to join the group in the presentation. The City, or CFPG, wanted to make full representation from all the important groups in the City and I was proud to have us invited.

* * *

[244] Q. I show you Plaintiff's Exhibit No. 22, the Greenbelt [245] News Review dated May 7, 1964 and particularly "Council and Audience Debate Restoration of Lake Shoreline" by Al Skolnik.

I refer you in particular to the paragraph following the subhead "Decision Reached". Would you read that? A. "It took the better part of two hours before the Council and the audience decided that it made much more sense to stop attacking each other and concentrate on a common target — Bresler — who wasn't there. The council rapidly agreed, —"

This story was written in a very light vein and I think it has to be put in the proper context. I would like to read the first paragraph of the story.

Q. Go right ahead. A. "Spring came to the city council last Monday, with everyone proclaiming their love of nature. Unfortunately, this love apparently did not extend to their fellow-beings, if one could judge by the course of the debate that took place after Councilman Cliff Simonson introduced a motion to have the city initiate a reforestation program for the area along Greenbelt Lake."

I don't have to read the whole story but I can if you want me to.

* * *

[248] Q. Then someone in the audience, together with the City Council, said let's shoot at a common target, which is Mr. Bresler.

Were you there? A. I was there.

Q. Were you one of the ones who — [249] A. Come on.

Q. Well, who suggested it? A. They were talking about the whole lake.

Q. Who suggested it? A. I don't know who was there. Wait a minute. It says — somewhere it says Cliff Simonson. Objected that much debris had been left along the shoreline, including much tar-oil that had been left and debris left by the developer, Charles Bresler.

Q. Mr. Simonson: Member of G.H.I.? A. Yes.

Q. Member of CFPG? A. Yes.

Q. On the Steering Committee? A. Yes.

Q. Ever on the staff of News Review? A. No.

Q. Friend? A. Yes.

* * *

[252] Q. I show you Plaintiff's Exhibit No. 24-A, Greenbelt News Review, dated Thursday, June 18, 1964. Would you read the headline and the first two paragraphs or as much additional as you want, or as much additional as you want to? A. This is June 18, 1964. The headline reads: "Former City Official Questions Legality of City-GHI 'Partnership'".

Q. "Former City Councilman Dick Pilski Monday night questioned the legality of what he alleged was a 'partnership' arrangement between the town's governing body and the directors of Greenbelt Homes, Inc.

"Pilski challenged the propriety of an [253] agreement reached between the city council and officials of the housing corporation, in which GHI pledged to pay one-third of costs involved in obtaining services of a special attorney and a planning expert for the purpose of helping engineer defeat of the Maryland Capital Park and Planning Commission's controversial plan for development of the Greenbelt-College Park area. The proposal is slated for consideration by Prince George's County Commissioners next month."

Q. Now what were the terms of that agreement between the city and GHI? A. I wouldn't know at this time. I just read the one-third.

Q. But you read the previous article in which the GHI had agreed that they would hire a joint planning expert and GHI would pay one-third and the City two-thirds. A. Yes, that is right; fine.

Q. Isn't GHI actually engaged in some construction and development? Aren't they building some houses and aren't they planning on building some more town houses? A. GHI is building 25 town houses.

Q. Fine. And they were building some other houses, are they not? A. I don't think they have — they have four free-standing [254] ones, right.

Q. And they have some other undeveloped land, do they not? A. What is it, 20 acres or 30 acres?

* * *

Q. Would you read this? A. "Pilski also objected to the manner in which the council, GHI and the News Review have handled publicity relative to the MCNPPC plan. He accused each of employing sensationalism to such a degree it has 'created panic among citizens.'"

This is what Mr. Pilski said at the Council meeting and we reported it.

Q. Now isn't it true that the News Review had engaged in sensationalism and had created panic? A. I don't think we did.

Q. Did the News Review deny it? [255] A. Deny it?

Q. Yes. A. No, let the record speak for itself.

* * *

[256] A. This is a story by Sid Kastner. [Plaintiff's Exhibit 26, dated June 7, 1962].

"Council Considers Bresler's Proposal for [257] Joint Planning."

* * *

"City council began its regular Monday night meeting at a leisurely pace, with the dry topic of insurance

bids, and ended up with a spirited discussion of whether a community should allow a developer to share in its planning responsibilities.

"The exchange was prompted by the submission of the Advisory Planning Board's report on a proposal, by the developer, Charles Bresler, for the joint development of a master plan. The proposal essentially would provide for the preparation of an over-all land use plan and detailed parcel plans, at an estimated cost of $8,000, with the city and developer sharing this cost equally.

"Reasons given by the Board for rejection of the proposal were that some of the contemplated work has already been carried out or is in progress by the board and the Maryland National Capital Park [258] and Planning Commission and that joint financing of a Master Plan could lead to conflict of interest on the part of the developer."

* * *

Q. Did you protest discriminatory action against Mr. Bresler? [259] A. Against Mr. Bresler?

Q. By not permitting the same arrangement that was not permitted with G.H.I.? A. This was in 1962. This other thing was two years later. You mean we go back and protest something that happened two years earlier?

Q. Did you protest the facts that if it was improper with Mr. Bresler it was improper with G.H.I.? A. Now this was an article of the City Council, and they said it was improper and they protested it.

* * *

[271] Q. *** "Alfred M. Skolnik reported upon and/or attended many meetings of the City Council, many meetings of Greenbelt Homes, Inc., Hamilton Place, Greenbelt, Maryland, a 1,500-member mutual housing cooperative, of which he is a member, and a few meetings of the Steering Committee of CFPG."

Now your wife was on the Steering Committee? A. Yes.

Q. What was the purpose of your attending the meetings of the Steering Committee? A. That is right.

Q. What was the purpose of your attending the Steering Committee meetings? A. I was interested in what was going on.

Q. Didn't your wife tell you what was going on? A. I felt it was better to find out first-hand.

Q. Did you participate in the discussion? A. I may have occasionally made a few remarks.

* * *

[275] Q. Did you ask any one of your staff to provide material to anyone who was instituting litigation against Mr. Bresler? A. I don't know if the question ever came up.

Q. Do you recall ever providing any information for that purpose? A. I recall making News Review copies available to City Council, CFPG.

Q. Who, in CFPG? A. Who?

Q. Yes. A. Well, I don't recall any particular person. I think copies circulated around the meeting places to acquaint [276] the members with the latest development in some of these areas.

* * *

[278] Q. Further on you say Doctor Stern — what is Doctor Stern's full name? Let me read the sentence there.

"Doctor Stern proposed and Mrs. Skolnik [279] supported, along with other members of the Steering Committee, the creation of a CFPG legal fund to assist interested citizens in legal actions to enforce land use in accordance with the covenants and the City Master Plan and to contest other actions respecting the development of the City of Greenbelt which were considered by the organization to be contrary to the best interest of the community."

Now Doctor Stern is Doctor David Stern; correct? A. Yes.

Q. Is he a medical doctor? A. I don't think so.

Q. Ph.D.? A. I think so.

Q. He was a member of G.H.I., now lives on Lake-

side? A. I think he may have been a member of G.H.I. originally.

Q. Member of the Steering Committee of CFPG? A. Doctor Stern told me that he was on the committee for about two months and then had to give it up because of other activities.

Q. So we will put S.C. in parenthesis to indicate — was he on the staff of the News Review? A. Yes.

Q. A friend? [280] A. Yes.

Q. Now Mrs. Skolnik, you say, supported the proposal to create this legal fund to enforce land use. A. Yes, it was my understanding it was unanimous vote of the Committee.

Q. That was in accordance with the covenant and City Master Plan, not just the covenants but any other actions which were considered to be contrary to the best interest of the Committee? A. That is my understanding.

* * *

Q. Yes, you were a member of CFPG. Did CFPG use that money for any other suits against anyone else who was [281] developing in Greenbelt contrary to the Master Plan of the City? A. I don't know whether CFPG was using the money for any other suits. I don't have access to their —

Q. Do you know of any other suits? A. I do not know of any other suits that they were supporting.

* * *

Q. Now was any part of this legal fund used for filing suits against Smith-Ewing to try to stop them from developing their property in more density than the Master [282] Plan of the City provided? A. I don't think so. I am not sure but I don't think so.

Q. How many acres did Smith-Ewing have? A. About three hundred I believe.

* * *

[283] Q. But no other suits have been filed, no other legal action taken against any other developer; correct? A. Well, by who or against who?

Q. By CFPG legal fund. A. Yes, at the moment —

Q. You say at the moment. Are there any proposed against any other developers? A. You are asking me at the moment. I do not know of any others.

* * *

[284] Q. What was the purpose of CFPG? A. The purpose of CFPG was to support the Greenbelt Master Plan in its low density, as originally in the original concept of Greenbelt. It was to promote community support [285] to the City Council which was engaged in a discussion with the Maryland National Capital Park and Planning on how the best way would be to develop Greenbelt and CFPG was organized because it was felt the Council needed support from all spectrums all groups in the community. That was the organization of CFPG. That is how it originated.

* * *

[286] Q. You go on to say:

"At various meetings, Mrs. Skolnik, at the request of CFPG's chairman, would report on the status of matters in which the organization was interested which included matters involving plaintiff," meaning Mr. Bresler.

Now what did Mrs. Skolnik tell you about the matters involving the plaintiff, which she would report on? A. I don't recall what Mrs. Skolnik told me about different activities. You are asking me what activities the plaintiff discussed at CFPG and Mrs. Skolnik says the matters discussed on the next page were the things discussed at the CFPG meeting.

* * *

[287] A. *** "Mrs. Skolnik and Doctor David Stern also attended public meetings of the Steering Committee of CFPG. At various of these meetings, the [288] following matters, among others were discussed:

* * *

"d. Complaints by purchasers of homes in the Boxwood and Lakecrest developments;

* * *

[289] Q. Now answer to Interrogatory No. 5, you say that:

"The News Review reported upon a CFPG door-to-door fund-raising campaign for contributions to the legal fund of CFPG referred to in '4' above in its issues of June 16, 23 and July 7, 1966 and had an editorial on CFPG's activities in the June 23, 1966, issue."

Now you mentioned — well I will read it.

"Dorothy Sucher, Mary Lou Williamson, Mary Smith and Doctor Sidney Kastner believe that they as individuals made nominal contributions, (approximately $1-$5) during this campaign. On information and belief, monies from said fund have been used in part at least to support an action by interested citizens based upon the covenants and the agreement between plaintiff, his wife and the City, i.e., Dennis et al versus Bresler et al," which is the case we are talking about as well.

[290] Now it doesn't remember any contributions by you. Did you contribute any money to this legal fund? A. No, I didn't. At least I cannot remember contributing any to the legal fund.

Q. Did your wife contribute any? A. She tells me she didn't either.

Q. But you solicited others to contribute? A. No, I did not.

Q. But your telephone number was listed as a place to call. A. This is the first time I saw it in there.

Q. Didn't you ever get any phone calls? A. I can't recall getting any phone calls.

Q. And your number was listed in two articles? A. I never looked at the articles.

Q. Two articles. A. I never looked at the articles.

Q. Now you mentioned Dorothy Sucher. She had been a member of G.H.I., had she not? A. I think so.

Q. Member of CFPG? A. Yes.

Q. Member of the Steering Committee? A. No.

Q. On the staff of the News Review? [291] A. Yes.

Q. Friend? A. Yes.
Q. Mary Lou Williamson.
Member of G.H.I.? A. Yes.
Q. Member of CFPG? A. Yes.
Q. Steering Committee? A. No.
Q. News Review? A. Yes.
Q. Friend? A. Yes.
Q. Mary Smith.
G.H.I.? A. No.
Q. CFPG? A. Yes.
Q. Steering Committee? A. No.
Q. News Review? A. Yes.
Q. Friend? A. Yes.

[292] Q. Now Doctor Sidney Kastner, is he a medical doctor? A. I do not think so.
Q. Ph.D.? A. I believe so.
Q. Member of G.H.I.? A. Not at the present.
Q. Was he? A. At one time.
Q. CFPG? A. I believe so; yes.
Q. Steering Committee? A. No.
Q. News Review? A. Yes.
Q. Friend? A. Yes.
Q. Now you said Doctor David Stern solicited the funds during this door-to-door campaign and made a contribution of $20.

* * *

[293] Q. You went on to say that:
"Elaine Skolnik made available to CFPG copies of the News Review clippings and documents from the files of the News Review, such as copies of the covenants and the release."
For what purpose did she made these available to CFPG? A. Because they were interested in these documents, they wanted to see what was going on.
Q. You speak of that in connection with a question pertaining to the legal fund. Was she making these documents available for the purpose of assisting in the suit against Mr. Bresler? A. I wouldn't know what purpose they were used for. All I know is that she was considered the resource person to me because of virtue of the fact that many documents,

reports, came into her hands and so she was always asked for information, background information, what is going on here and what is going on there.

Q. Was she authorized to remove from the files of the News Review the clippings and documents, which you referred [294] to? A. No, these were our own documents.

Q. Your statement was Elaine Skolnik made available to CFPG copies of News Review clippings and documents from the files of the News Review. A. News Review duplicates. In other words, she had her own and News Review had some and that sort of situation. These were public documents, there was nothing secret about it.

* * *

[295] Q. Now you also mentioned in answer to Interrogatory No. 6:

"Mary Lou Williamson, Alfred M. Skolnik, Elaine Skolnik and Sidney Kastner are members of G.H.I., which it is believed made a contribution to the legal fund of CFPG."

[296] Do you know whether G.H.I. actually contributed to that legal fund? A. I do not know, I am not sure whether it did or not.

Q. Didn't you publish statements in the paper at one time about G.H.I. contributes to the legal fund? A. All I remember is they asked for a contribution. I couldn't remember at this time whether a contribution was given or not.

Q. Isn't it a fact G.H.I. did contribute to the legal fund? A. I really don't know at this point.

* * *

[297] Q. Now your answer to that was:

"Alfred M. Skolnik, Elaine Skolnik, Mary Lou Williamson and Sidney Kastner are members of G.H.I. which is believed to have owned at one time the land described in the Plea and Answer and Exhibits annexed thereto. Defendant cannot furnish the information requested with respect to land dealings of G.H.I. which is a separate corporation over which defendant had no control. It further states that it would be un-

duly burdensome to require it to obtain said information and that said information is not relevant or material to any issue in this action."

Now you are a member of G.H.I.? A. I am one of 1550 members.

Q. So you do have some control? A. Well —

Q. Well let's say — A. You can form your own judgment to what control.

[298] Q. Let's say interest. You are a member of this corporation? Mr. Skolnik, you are, you have acquired a lot of information about Mr. Bresler's activities because you reported in the paper. A. Yes, it was newsworthy.

Q. Fine. At the time was it newsworthy at the time G.H.I. owned all of the land plus several hundred acres more, all of that same land we are talking about, plus 700 acres more, were you interested in that time in what your own corporation owned and did with it? A. Now are you saying was I interested personally or was the News Review?

Q. You personally or the News Review. A. I believe the News Review covered those transactions back in those early years.

Q. How about you personally, were you interested? A. Not particularly interested at that time.

Q. Well, did you do any research? You did research on the plaintiff's holdings. A. Remember this land was sold twelve years ago. You are asking me personally whether I was interested at that time in what was going on in vacant land. I was not interested personally.

Q. You were a member of G.H.I. at that time? A. Yes.

[299] Q. You had had a house in Greenbelt? A. That is right.

Q. You had no interest in what was going on? A. I didn't say I had no interest. I said I wasn't particularly interested in development of land at that time.

Q. When did you become interested? A. In 1961 or 1962 when the land came up for zoning. That is when the interest materialized.

* * *

[300] Q. *** Now what was the purpose of you and Mrs. Skolnik attending a meeting in connection with litigation against the Board of Education? A. The G.H.I. Board invited us down to this meeting because they felt that we had all the background information on the whole development of the situation. They wanted the attorney to know all the facts in the situation.

Q. What background information? A. The stories that appeared in the News Review, the whole series of stories that you put into the record here.

Q. What else did you furnish them? A. That is what we furnished them.

Q. Were you interested in promoting that litigation? A. We were interested in doing whatever we thought was best for the community.

Q. That is not my question. Were you interested in [301] promoting that litigation. A. We were interested in promoting the litigation.

* * *

Q. Your discussion about the G.H.I. Board, against the Board of Education, this involved Mr. Bresler's property, right? A. I believe so.

* * *

[302] Q. Mr. Skolnik, you remember when I took your deposition referring to page 82, we had a discussion about the article which was entitled "CFPG Meets, Vows To Continue Fight".

* * *

[303] Q. I asked you who wrote that article and you said you wouldn't know and you said it looked like a press release. And then Mr. Clark handed you a copy of the article and then you said:

"Well, it looks like a staff reporter rather than a news release. We can't be sure."

Then I asked you:

"I would assume from the way the article is written that it is an article prepared by someone on the staff, rather than a news release; is that correct?"

"A. Yes, it could be. Yes.

"Q. Do you know whether your wife wrote that article?

"A. I think I may have written most of this, come to think about it.

"Q. Were you present at that meeting?

"A. Yes."

* * *

[307] A. Again, this is a letter from the Superintendent of Schools. This letter is dated five months after that original proposal was made back in October, the one that you claim was libelous because of the blackmail statement. I just wanted to get the sequence. There is five months later — this is five months later.

"Mr. Bresler, on behalf of himself and his associates as owners of the expressway site and the beltway site, agreed to extend the option heretofore given to the Board of Education to acquire approximately 55 acres at the expressway site at an average price of $8,000 per acre for a period of thirty days, during which the G.H.I. would be requested to allow the staff of the School Board to select the ten acres that would be available for the elementary school site. In the meantime, G.H.I. would determine the price for which the said land would be available and take the necessary legal actions to determine whether [308] or not they could convey it to the Board of Education. At the same time, the School Board would determine once more the relative merits of the two locations, namely, that of building the school complex at the expressway site or to accept Mr. Bresler's offer to make available ten acres at the expressway site at $8,000 per acre, the City to convey five acres free-of-cost of the sanitary land fill as the proposed junior high school site, and to make arrangements to purchase the beltway site for the senior high school.

"Following Mr. Bresler's presentation to the Board, Mr. Beatty, summarized the offer submitted by Mr. Bresler as follows:

"1. The Mayor and City Council would donate five acres of the sanitary land fill.

"2. G.H.I. would sell ten acres of their land at release cost, not to exceed $25,000.00 for an elementary site.

"3. Mr. Bresler and associates would sell ten additional acres of land in the park way site at $8,000.00 to be added to the City's donation of five acres in the sanitary land fill, making a 15-acre junior high school site. Mr. Bresler would likewise sell 25 acres of the beltway [309] site at $18,000.00 an acre for the senior high school site.

"4. The Mayor and City Council of Greenbelt would purchase from Mr. Bresler and make available to the Board of Education five acres from park land to be a part of the senior high school site. In addition, Mr. Bresler agreed to give a right-of-way for a road into the senior high school site.

"Further discussion with Mr. Bresler relative to the topography of the land which G.H.I. might make available brought forth a remark from him that, if the land offered by G.H.I. was unacceptable to the Board of Education, he would trade ten acres of his holdings which were acceptable for the ten acres of the ground offered by G.H.I.

"In light of this statement, a resolution was passed deferring action on the acquisition of school sites in Greenbelt until March 30, 1966.

"The first step taken following this procedure was initiated by Mr. Gwynn who telephoned Mr. Roy Brashears, an official of G.H.I., on March 2 requesting an appointment to examine the site proposed by G.H.I. for their ten acres of [310] land to be purchased by the Board. Mr. Brashears informed Mr. Gwynn that the offer was no longer valid and that it would be useless to make the trip as the cost to the City (in terms of the density required by Mr. Bresler) was too great a concession to be made by the City."

* * *

January 5, 1968

* * *

[316] CHARLES BRESLER

the Plaintiff herein, called by and on behalf of the plaintiff, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CHASANOW:

* * *

Q. Now Mr. Bresler, do you have any interest in any land, corporations, which are building in Greenbelt? A. Yes, I do.

Q. Would you tell the Court the extent of your interest in Greenbelt? [317] A. There are three tracts of ground in Greenbelt that I have some interest in. I have a trustee in a venture which controls some 250 acres with Mr. Theodore Lerner and Mr. Ammerman. We are trustees, I am trustee for my own interest, which is about 16-1/3 per cent.

In addition to that there is a company called Charles Burton Builders, which constructed some homes on Lakeside Drive and sold between twenty-five and thirty thousand dollars of which I had approximately a 25 per cent interest. In addition to that there is one other company that is known as Boxwood Village, that originally owned the ground in Greenbelt known at Parcel 7. At its inception I had approximately a 16-1/3 interest in that. It was sold within about a year after the corporation was developed. I believe I still served as accommodation officer in that corporation due to the death of one of the main principals.

The apartment project that Mr. Skolnik referred to, Charlestowne Village, is a joint venture that is owned by Mr. Burton Reiner and his wife and myself and my wife and my interest is about 25 per cent in hat venture.

At one time I owned a portion of the ground which is now the Greenbelt Convalescent Home. This is

now controlled by Mr. Levitt and is operating as the Greenbelt Convalescent Home and I had a stock interest there which has now diminished to about 16 per cent or 18 per cent. I [318] believe that is all.

Q. Do you personally own the bulk of the undeveloped land in Greenbelt? A. No, I do not.

Q. Do you know who the other owners are of land which is either undeveloped or in the process of being developed in Greenbelt? A. G.H.I. owns quite a sum of land, I don't know the actual acres, I think Mr. Skolnik mentioned that.

Smith and Ewing and others own about 325 acres that I am aware of.

Springhill Lake owns, I think it is 1600 acres overall, but I am not positive of the acreage. They have already developed some 4,000 apartments.

Beltway Plaza owns 70 acres. I believe that Korvette owns what was referred to as the Golden Triangle or 60 acres.

I believe the actual zoning petitions, according to the maps, showed some 600 acres up for zoning at that time, which the venture, which I was a trustee of, was responsible for about 230, if I recall, or 340 acres, something like that.

* * *

[327] Q. Mr. Bresler, you heard Mr. Skolnik testify yesterday that he had met you on one or two social affairs. Do you recall meeting him at any social affairs? A. Yes, I do recall meeting Mr. Skolnik and Mrs. Skolnik on a number of occasions.

Q. Do you recall any specific conversation you had with Mr. or Mrs. Skolnik or both? [328] A. Well, I can't remember specific conversations, but I can remember generally discussions as to what was said. Of course they were very much interested in what we were going to do in Greenbelt and they were most — well I would say more particularly Mrs. Skolnik was very adamant about what they thought should be done in Greenbelt. In addition Mr. Skolnik had mentioned a few times that Greenbelt News Review and his position in the community. Advertising value of the Green-

belt News Review. This was also mentioned by Mr. Skolnik a number of times. There was some discussion at one point as to whether we were going to have an advertising program and whether we were going to use the Greenbelt News Review. Generally the discussions hinged about what they thought should be done in Greenbelt and more particularly Mr. Skolnik and Mrs. Skolnik and just what they would like to see done and how they would like to see done. And, of course, they were very much interested in G.H.I. and how it affected their property holdings.

* * *

[332] Q. Now did you attend many meetings of the City Council? A. No, I did not. I would say that between 1961 and the present time I don't think I attended ten meetings of the City Council. The only time we appeared at the City Council is when we received a direct request. In fact most of the things that are attributed to me in the newspaper were actually the result of maybe lawyers or engineers or real estate people being there who were there in behalf of the venture. I mean, you know, one of the things that upset me so much was the fact the Greenbelt News Review was aware that I was not the principal owner in this property, that I only owned a minority interest and it was a fiduciary interest, I was a trustee that had to act.

In addition to this the major owner of this property died and leaving this in his estate and much of what was done had to be done in the best interest of this estate and I had no control over, yet they consistently and constantly pointed at Bresler, Bresler, Bresler does this and Bresler does that and the interesting part is these same owners are among the major owners of Springhill Lake, which is the largest single development in Greenbelt and they never once mentioned that.

* * *

[354] Q. Now who was the City Manager at that time that that agreement was entered into? A. Mr. Charles McDonald was the City Manager.

Q. Did you have any further communication from Mr. McDonald with reference to conveying that 3.3 acres of land to the City? A. Not only Mr. McDonald, but others in the community who became very upset at what was going on.

Q. Specifically, Mr. McDonald. A. Yes, I have a letter which Mr. Clark has. I believe you have it in the deposition agreements, Mr. Clark.

* * *

[359] Q. Mr. Bresler, I show you Plaintiff's Exhibit 28.

MR. CLARK: No objection.

BY MR. CHASANOW:

Q. Greenbelt News Review dated Thursday, February 25, 1965 and refer you to the paragraph under the heading [360] MNCPPC Adopts Area 13 Plan; No New Single-Home Zoning.

I ask you to read the paragraph underlined in red. A. "Parcel 1 and 2, owned by Charles Bresler and located between the Baltimore-Washington Parkway and the G.H.I. houses have been completely allocated for R-30 zoning, excepting only a small local park."

Q. Do you own Parcels 1 and 2? A. No, I don't own Parcels 1 and 2. I think the News Review reported this in the first issue that Mr. Bresler and Mr. Gudelsky and Mr. Lerner owned Parcels 1 and 2.

Q. What is the extent of your interest? A. As I stated before, 16-1/3 per cent. It has never been any higher and has never changed from the day I first became interested in the ground.

* * *

[361] [THE WITNESS] * * * "Court Order."

"At a hearing held two weeks ago, a Court Order was issued to the Builders of Boxwood, another Bresler development, to finish the grading work and seeding behind Empire Place, the work to be completed within thirty days. The builders were also advised to attempt to get permission from WSSC to construct a sewer."

BY MR. CHASANOW:

Q. Is this a true statement? A. No, sir, it is not.

Q. What is untrue? A. The first thing that property was sold, that property was sold in September of '63 to Ivy Homes and Fern Estates, and I believe the — well, they were aware, Mr. Skolnik mentioned earlier that he got all these things that he wrote from minutes and memorandum and I believe he stated public documents or something of that nature. Well, the City [362] Manager's own report reported the sale of that property and the fact that Mr. Schultz was up there and Fern Estates and Ivy Homes, and it was very evident we had their interest in it at all, I am talking about the owners of ground. So it was definitely an untrue statement and intended to say there was something else I wasn't doing down there to finish the grading and seeding work and to the people from Empire Court it, you know, it was funny, people from Empire Court were calling me on this thing and I had to explain to them all over I have no interest on this, go explain it to Mr. Schultz or Kings Point Homes.

Q. What happened to that lawsuit; do you know? A. Yes. Not Mr. Schultz, because it was eventually Mr. Poland who represented Kings Point Homes. I notice in the City minutes, went ahead and soded and seeded the bank and went ahead and did what had to be done. There was no suit against me or anybody else. Initially, I believe, Boxwood Village might have been mentioned but was completely dropped. The City Manager, by his own admission, paid the attorney, had made a mistake here in court. I believe you are the attorney in that case, Mr. Chasanow.

Q. Wasn't it a fact the case against Boxwood Village was dismissed by the Court? A. Yes, it was dismissed and I believe they agreed among themselves that they had made an error.

[362] Q. You were not sued personally in there? A. No. The only personal suit I have had in Greenbelt is the one the City filed against me at the instigation of the News Review and G.H.I.

Q. Now Mr. Bresler, on the suits, you heard yesterday on the statements that several homeowners

reportedly had started legal proceedings against you.

Now what do legal proceedings mean to you? A. The only thing legal proceedings means to me is they started suits against me.

Q. Was it true anyone had filed suits against you for failure to maintain and construct in standard in accordance with County requirements? A. Not prior to this article; no, sir.

Q. Has there been a single suit against you filed? A. No, sir, there has not.

Q. Mr. Bresler, are you a blackmailer? A. No, I am not a blackmailer. I think blackmail is —

Q. Did you attempt to blackmail the City Council or the Board of Education or anyone in connection with any of your projects or developments? A. I did not. I believe the — they are well aware of that fact.

Q. Do you subscribe to the News Review? A. No, sir, we do not. We tried but couldn't get a [363] subscription.

Q. What do you mean you tried but couldn't get a subscription? A. Well, the paper gets delivered free everyplace. Unfortunately they don't have a place where you can buy them. I don't think. We tried to buy them and couldn't find them anyplace. We instructed our office to call down there, as I understand Mr. Lerner's office did, for a mail subscription and they were told they didn't mail them out. Now I am surprised that Mr. Skolnik mentioned that they have 50 or 75 people that receive mail subscriptions.

Q. Do you get any copy of the News Review? A. Oh, yes, I get them; oh, yes.

Q. When and how? A. Anytime there is a derogatory article it isually appears in my home the following day, followed by a number of phone calls from, I presume, some people who are out in Greenbelt, formally comes addressed to the Breslers. My wife opens it and one of my six kids will get up there and want to know what it is all about, and I keep them as I work in the car. And the local residents call re-

ferring to the Bresler news because invariably two or three articles are on the front page mentioning me by name and allude to my name as one of them said, if it wasn't for me there wouldn't be any paper.

* * *

[372] CROSS EXAMINATION

BY MR. CLARK:

Q. Mr. Bresler, you referred in your direct testimony to the fact that you have been mentioned in the Metropolitan newspapers a number of times; is that correct? A. That is correct.

Q. Now have your real estate activities, your dealings as a builder, a developer, been a subject of feature articles in the Metropolitan papers? A. Yes, they have.

Q. I show you an article entitled "Vast Private Developments Planned in 25-Year Old Community" dated October 6, 1962. I ask you have you seen that article? A. Yes, I have.

Q. Now, Mr. Bresler, would you read the first three paragraphs of that article? A. "Greenbelt, the experimental planned community born 25 years ago during the New Deal, is on the verge of major growth as a similar but private enterprise green-space concept of a 35-year old [373] Republican builder.

"Charles S. Bresler, who was in his family's poultry business before he began building homes in the District, Montgomery County and Northern Virginia, acquired 450 Greenbelt acres for nearly $2 million from a Webb & Knapp subsidiary. Bresler is beginning the first group of 61 homes with partner Burton Reiner. However, total planning and zoning worked out with Greenbelt officials call for some 800-single family dwellings and 350 town houses in the areas north and south of Greenbelt Lake."

Q. Would you read the following paragraph? A. "'Our ambition,' said the casually dynamic Bresler, 'is to make the best utilization of new construction in relation to the original Greenbelt development that

stressed trees, open green spaces, community services, protected walkways and comfortable living."

Q. Now would you consider this a fair statement of your aspirations for the community at that time? A. I would think so; yes.

Q. Now would you skip down and read the — you can, of course, read anything you want in the article, but I would like to refer to the — read the next two paragraphs, if you [374] would, please. A. Greenbelt —

Q. No, sir. A. "Greenbelt knows Bresler because he has been at work several years in the research, planning and purchase of the beautifully wooded tract that he is now ready to develop. Two years ago he built, and then sold, the 87-unit Greenbelt apartments — a three-quarter million dollar project.

"While making applications for zoning and planning concepts that would permit development of both single homes and town houses, Bresler worked closely with Greenbelt's Mayor Francis W. White and members of the Town Council."

Q. Is that a fair summary of your dealings with the Town Council; would you say? A. Working closely?

Q. Yes. A. I would say so, yes.

* * *

[393] Q. Mr. Bresler, I believe you testified on direct examination that these covenants were presented to you at the last minute, before the zoning hearing and that you objected to the fact the City was requiring you to sign these covenants; is this a fair statement of your testimony? A. As they were written, yes, they were far different than the agreement we had previously made.

Q. And did you resent being required to sign these covenants? A. I presume I did. I can't remember exactly what I did at that time. I signed them, if that is what you mean.

Q. Now Mr. Bresler, why did you resent signing the covenants? [394] A. Because it was different than what we agreed on. The changing of it was ac-

tually a broken promise that the City had made. We discussed R-30 on this ground the whole time and the draft agreement that was drawn up by the City, which my attorney has a copy of, mentions R-30 and got only that, but it agreed that when the R-30 zone was adopted the City would go in and join me in adopting the R-30 zones. And this was what was agreed for everybody.

Q. Isn't it a fact Mr. Bresler, that that restriction to seven units per acre was fully sufficient to allow you to build the town houses which you represented to the City that you intended to build? A. No.

Q. In other words, your testimony now is that this document limited you, restricted you, prevented you from developing the property in the manner in which you were then planning to do it? A. No.

Q. Well, what is your testimony? A. I am not making any testimony. You are asking me questions and I am answering you. You are asking me about fact and I am saying no.

Q. Well, let's go back.

Do you deny that you represented to the City and to the County Commissioners that you intended to develop [395] this property to a density of no greater than 350 units? A. I don't deny, no. No, I do not deny it.

Q. Now Mr. Bresler, if those were your plans to develop it to 350 units, why would you resent these covenants? A. Because they were not what we agreed upon.

Q. But wouldn't they, wouldn't these covenants allow you to develop the 350 units? A. I don't know, I didn't examine what they would allow me to develop.

Q. Well, now, Mr. Bresler, let's look at this sentence. The number of dwelling units shall not exceed an average of seven per acre for the entire 50.4390 acres of land in said tract.

Now simple multiplication would say that you come out with at least 350 town houses. A. Correct.

Q. Now that is what I am having trouble with. Why would you resent signing something that required you

to do what you represented you were going to do in the first place? A. Because it was different than the agreement that was made which was for R-30 zoning.

Q. In other words, you would rather have a little latitude to do a little more on the property? [396] A. There was no —

Q. A little more than you represented? A. No.

Q. Now Mr. Bresler, did you express this feeling of resentment that you had, this feeling of it being pretty rough on you to force you to sign these documents?. Did you express your resentment to the City Council when you — A. I can't recall, I think some mention was made at the time, that it was different and there were some words that went back and forth and there was a time element involved. I just can't recall what it was.

Q. Do you recall appearing at the April 16, 1962 meeting of the Greenbelt City Council, two days before your zoning hearing, at which the City formally decided to accept the covenants and in consideration thereof to support your request for R-18 zoning? Do you recall that? A. No, I don't, I am sorry.

I know I appeared before the Council, the City Council numerous times, dates and places and agreements that were made I cannot recall, I am sorry, Mr. Clark.

Q. Perhaps you will recall the resolution that was adopted at that meeting.

Whereas Charles S. Bresler and Fleur S. Bresler, his wife, owners of a parcel of land located along the northerly side of Greenbelt Road as described in a [397] declaration of covenants, are desirous of developing said land with town house dwelling units and to that end have applied to the Maryland National Capital Park and Planning Commission for R-18 zoning and

Whereas — I am going to skip a little bit now. I will show you this.

Whereas, said owners are agreed to impose a protective covenant and restriction on said land and convey by agreement approximately three and one-third

— 3.3305 acres of land, et cetera, and goes on, the City thereupon adopted your resolution.

Do you recall that? A. I am sorry; I don't.

Q. Now the resolution in the minutes of the meeting further state, Mr. Bresler thanked Council for their interest above and beyond normal function.

Do you recall thanking the Council at that meeting? A. No, I am sorry; I don't.

* * *

Q. After the zoning was granted, after the City approved your request and the support of your request, did you address on open telegram to the City Council to the [399] citizens of Greenbelt? A. Yes, I did.

Q. I show you a copy of the Greenbelt News Review dated Thursday, July 12, 1962 and direct your attention to the second column at the lower right-hand — second column on the left-hand side and ask you if you will read that open telegram? A. "PLEASE ACCEPT OUR THANKS FOR THE COURTESIES, CONSIDERATION AND AID THAT YOU HAVE EXTENDED TO US IN PRESENTING OUR ZONING AMENDMENT. THE CULMINATION OF OVER ONE YEAR'S WORK IN THE GRANTING OF THE ZONING TODAY SIGNIFIES A NEW ERA IN BUILDER-DEVELOPER PLANNER AND CITY COOPERATION. WE PLEDGE TO YOU, THE CITIZENS OF GREENBELT, THAT WE WILL NOT TAKE THIS MANDATE LIGHTLY. WE WILL ENDEAVOR TO GIVE TO THE CITY AN AREA THAT WILL BE ECONOMICALLY SOUND, PHYSICALLY ATTRACTIVE AND MUTUALLY BENEFICIAL. THANK YOU FOR JOINING WITH US IN ATTEMPTING TO BRING A NEW CONCEPT OF LIVING TO THE CITY OF GREENBELT."

Yes.

Q. Now when you sent that telegraph, do you recall whether you had resentment to the City for requiring you to exercise the covenants? A. I stated earlier that this was what they were going to do with everybody, that they were going to get the same [400]

covenants from everybody. And at that point I was no longer resentful, I was happy we are going — well, happy to have it. Due to the fact they were going to do it with everybody, including G.H.I.

Q. So you were not resentful at that time? A. In July?

Q. Yes. A. No, as long as everybody else was going to get the same treatment as I why should I be resentful?

Q. Do you recall appearing before the Prince George's County Commissioners, sitting as a Zoning Council, on your petition for R-18 zoning for this property, for the Charlestowne tract? A. Yes, I do.

Q. And do you recall stating to the County Commissioners that you had these covenants and they were binding on you? A. Yes.

Q. Do you recall in your presentation to the Prince George's County Commissioners that the main reason, the most important reason in your mind, for their granting this zoning request, for their giving you R-18 zoning, was the fact you had worked out this agreement with the City and that the citizens of Greenbelt supported your request for R-18 zoning? Do you recall that? A. No, I don't. No, I am sorry. The main reasons [401] for the Commissioners giving me the zoning.

Q. Yes. A. That I stated this?

Q. Yes. A. Oh, I don't think so. You know zoning is by law and the best use of property, Mr. Clark. I would think the Commissioners wouldn't even hear something like that. I am sorry.

* * *

[405] Q. Now Mr. Bresler, do you recall, going forward now some two years to June of 1964, that there came a time when you filed a document of record stating that the covenants were invalid? A. Yes, I do. We discussed this in a deposition. I think you have a letter for the reason for that, too.

* * *

[406] Q. Did the City sign that document? A. I don't know. Do you have the rest of the pages? I

don't believe so. I don't see that — of course I can't [407] tell you.

Q. Is there any doubt in your mind whether the City signed this or not? A. I don't recall the City did sign it, unless the title company asked the City to sign it. I didn't prepare that document. It was handed to me by the title company when they were putting mortgages on the property for construction ground. They got who they felt would have to sign it and send it to those people. I see there are about six signatures on there and there are other pages with signatures on it. Whether they sent it to the City or not I don't know.

Q. Are you finished? A. Yes.

Q. This document states, does it not, "The undersigned being of the parties interest therein do hereby abrogate and nullify the Declaration of Covenants."

Now you understand that to mean that the covenants are no longer null and void in your mind, I mean are no longer valid in your mind? A. They are no longer a legal instrument, that is what I recall to mean.

Q. You don't think the City signed it? A. I don't think so, no. Well you know I don't think so. I know they didn't sign it. Let's not kid each other.

Q. Now did you tell the City you no longer considered [408] the covenants to be binding? A. At a later date we discussed it, yes, I can't remember when it was.

Q. You have no recollection? A. I think it was at the time of the Nursing Home exception the statement was made, the zoning exception for the Nursing Home. There was some mention made then about the accepting of additional covenants, Mrs. Skolnik was present, and the mention was made of the covenants and at that point they sent them to the lawyers and they were then, I believe, informed that the existing covenants were faulty. I can't recall actually the context, Mr. Clark. I am sorry, but there was mention made to either the City attorney or Mr. Giese or his assistant, who I can't recall his name, but anyway, there was much discussion about additional covenants.

* * *

[410] Q. Isn't it a fact Mr. Bresler, the Nursing Home exception you referred to took place prior to the date of these covenants and isn't it a fact you represented to the Prince George's County Zoning Council that the covenants were with respect to the existing property was still in effect but additional covenants could not be given for the Nursing Home because the property had become involved with other builders? A. I don't know. I don't know. If you will bring out the testimony I will be glad to tell you it was or wasn't. When was that testimony made?

Q. I show you a letter dated April 30, 1964 to the [411] Board of Commissioners of Prince George's County, signed by Charles S. Bresler. A. Right.

Q. And I ask you there if you do not refer to the covenants on the Charlestowne tract as being in effect and state that you simply were unable to put additional covenants on the Nursing Home tract because of the change in property? You don't have to read it unless you find something. A. (Witness reads letter)

Now what was your question?

Q. I said isn't it a fact —

Read back the question.

(Record read)

THE WITNESS: It says: I am informed it is impossible to have all the parties involved in the subsequent transfers and mortgaging of the adjacent ground agreed to such restrictive covenants. It will not be possible for me to have such covenants adopted. I do not feel, however, that this should not be a condition precedent for granting any zoning exception.

BY MR. CLARK:

Q. Now you are talking about additional covenants, right, not the existing covenants? A. I would presume that is what it says.

Q. You don't say anything there about the existing [412] covenants? A. There are covenants on this ground already. This is extra covenants I presume; is that correct?

Q. Covenants on the ground are the covenants we

have been talking about? A. They were not released as yet; am I correct in that time?

What is your question?

Q. You did not state in that that you thought the covenants were [invalid]? A. I didn't, because they were not released yet.

Q. But you feel later, in fact, this zoning exception was granted before the covenants were released? A. Was it in — when was it granted?

Q. (Documents handed to witness)

A. The first day of May.

Q. And release was filed July 2 — excuse me, July 14th? A. I think you said July 2. It was filed July 14th.

Q. So just to go back now, your testimony that you advised the City that these covenants, the existing covenants, were invalid during the course of the Nursing Home exception, that wouldn't be correct? A. I guess it was afterwards, then. No, it was during then because we had a meeting, the covenants were a subject [413] of discussion at that point.

If I can recall in context and again you have got me at a disadvantage because I don't have the dates, these covenants were not mentioned until the title company called and said there is something wrong with the covenants of the property or the existing mortgages going on here, they were doing a title search and they prepared these documents as release of covenants and sent them on down. I don't think they were sent down the day it was discovered. It was discovered prior some time around. But I can't tell you that, I am very sorry, I just don't know.

Q. Do you recall the other occasion when you allegedly told the City about these covenants? A. No, I can't, I am sorry.

Q. Isn't it a fact, Mr. Bresler, that you continued to allow the City to think the covenants were still in effect while you continued to build town houses, approximately 144 town houses up in a little parcel A to the property to a density of about 12 units per acre; isn't that a fact? A. No, it is not a fact.

Q. Isn't it a fact that you were questioned at a meeting of the City Council of Greenbelt on May 17, 1965 over eleven months after this document called a "Release of Covenants" was filed? Isn't it a fact that you were asked at that meeting by members of the City Council about the [414] covenants and that you said my plans are well within those covenants and if you gentlemen ever have to approve anymore than 350 units — if there are ever more than 350 units planned you gentlemen will have to approve it first? Didn't you say that? A. I could have very well said it and they did.

Q. When these members of the City Council, do you recall the members of the City Council asking you specifically about the covenants? A. No, I don't. I am sorry.

Q. Do you remember being asked by Mr. Lewis Bernstein, a member of the City Council, at that point, this question:

"How many units do you have planned at that time?"

And you answered him:

"I have another 178 units that are being planned right now."

"BERNSTEIN: That is a total of how many?

"BRESLER: 298 units.

"BERNSTEIN: What is the covenants that you put on there insofar as units —" and he was interrupted by somebody and you say:

"I am well within it, 298 would be well within it; right."

And you recall Mr. Bernstein saying:

[415] "Our concern is when you talk of planning or you don't talk of it, you infer that there may be more than 350 units planned there."

You answered:

"If there are ever you gentlemen will have to approve it first."

Do you recall that? A. No, I don't, but I don't see anything different than what actually happened, if that is what you are getting to.

Q. Do you recall whether you stated at that meeting when you were being questioned about the covenants, that eleven months earlier you would file a document, in the official court records, that stated you considered those covenants invalid? Do you recall that? A. No. I don't recall. It could very well have been said, though. And I didn't file the document anyway, I wouldn't have said that. The document was filed by the title company, Mr. Clark.

* * *

[416] Q. My question to you is simply this: In May of 1965, when you were at the City Council meeting, did you know at that time that you had filed a document saying these covenants were null and void? A. I don't recall whether I knew or whether I told the Council, as I said before.

Q. Did you know at this time, did you consider at this time the covenants null and void? A. I don't know, Mr. Clark. You are asking me to go back three years and trying to say what I considered. I can't tell you, I am sorry.

Q. When the City asked you about these covenants, [417] didn't you tell them you felt some obligation? Did you feel you had some obligation to tell them they were null and void at this point? A. I don't know that they asked me.

* * *

[419] Q. Mr. Bresler, we were discussing before the lunch break, the report from the newspaper that Mr. Chasanow referred to you, you remember the one, City Fights Bresler on Two Fronts, a report that a 490 unit subdivision plat for Section II of Charlestowne Village had been filed with the Maryland National Capital Park and Planning Commission. Do you recall that from lunch, the question? A. Yes.

Q. Do you know whether such a plat was filed? A. I believe it was.

Q. And that plat showed 490 units? [420] A. I don't recall what it showed. I didn't see the plat prior to its filing.

Q. I show you this document and ask you whether that refreshes your recollection as to how many units

were shown on the plat? A. I don't see the reference to number of units. It shows 18 buildings. Oh, yes, all right, it is over here, 490 — it says resubmitted and changed — I don't see any date as to when it was filed again.

Q. Does that have a date on it when it was prepared? A. It says revision 29 March 1965. I don't know whether that is the date of the drawing. I just couldn't say.

Q. It isn't customary from drawings of this nature that date indicated there would be the date of the last revision made to the drawing as it appears? A. It could very well be and it could not. I just don't know, Mr. Clark. Is that a photostat of something that was probably much larger than this and I just can't really tell you.

Q. Are you having difficulty reading it? A. No, I just don't know.

* * *

[422] Q. Do you recall my asking you the question whether at the May 17, 1965 meeting you said in answer to Mr. Bernstein's questions about the covenants that "how many units do you have planned at the moment?"

And you answered: "I have another 178 units that are being planned right now."

Do you recall that question and that answer? A. I recall discussing it. I don't recall the specific question or specific answer. I did have 178 units [423] planned, I did build 178 units.

Q. Were those 178 units as planned at that time an apartment house? A. They were planned in a garden type town houses as we call them. This was back in '65 you are talking about.

Q. Your testimony is now that the — you had at that time 178 units planned in town houses? A. Roughly, yes, sir. I think it was even — I think 178, maybe it was 179, I don't really actually remember.

Q. Didn't you have in fact plans for [a] 178 [unit] apartment house, in fact the one you built? A. No, not yet.

Q. Mr. Bresler, I show you this document dated

April 1965 [Defendant's Ex. 13] one month before that meeting, and ask you whether that refreshes your recollection as to whether or not you had a 178 unit apartment house planned on that day? A. This plan is dated when? This plan is dated 11/15/65 — November the 5th, 1965.

Q. This plan. Is there not a date of April? A. It says here revised 10/1/65, 10/8/65 and 10/8/65.

Q. What is the original date of the drawing, Mr. Bresler? A. The original date is April of '65.

Q. And my simple question to you is does that refresh your recollection whether you had a 178 apartment house [424] planned on that date? A. No, it doesn't. This shows 178 plus would be 179.

Q. Let me rephrase the question. A. You are misusing the dates here.

Q. Let me rephrase the question. Did you have 178 units plus a doctor's office? A. I don't recall, but you are using dates here that might not be the proper dates. If I might explain to you how this is done.

Q. If you feel it is absolutely necessary. A. I feel it is to clear the record. You are trying to get me to say something. I don't recall what — I don't know what you are trying to get me to say.

Q. I am not trying to get you to say anything. If you do recall you may answer if you don't recall we can pass it. A. Excuse me. You are referring to a document which purports to be something and you are referring to dates which is not a correct date. Once the original document is made of a plat it might be just this parcel B and that might have been what Parcel B was first drawn up in April of '65.

Normally speaking an engineer makes that first drawing and puts the date on it. Each time he does something additional to it he then adds the new date on it or supposedly adds it. Now it says here "site plan", revised 10/1/65. That could be the very date this building was put [425] on. I don't know. I am just trying to explain that to you, Mr. Clark. [The original drawing bearing only the date April 1965 shows the same apartment house. E. 254]

[441] Q. Now Mr. Bresler, do you believe the citizens of Greenbelt had a legitimate interest in whether these covenants were complied with? A. I don't know whether the City — do I believe?

Q. Yes, I am just asking you. A. I don't think the citizens of Greenbelt, my own thinking, I don't know if they were even aware of the covenants. If they were they should be screaming down to the City Council, who refused to act if they were so interested. And I see half the audience or all the audience is from Greenbelt. They knew who was — they knew what was going on, they knew the letter, they had published it in the paper, that very week it was there and spoken with their Council if the citizens were interested in protecting the covenants. They should have insisted.

* * *

[443] Q. Now Mr. Bresler, did you appear before the School Board on September 15, 1964; if you recall? A. Let me state this, Mr. Clark: maybe it will make it easier for both of us. I appeared before the School Board on numerous times. I don't know the dates. If you [444] have some time that you say I was there, and have records, I will agree with you that I was there. Mr. Lerner was also there, Mr. Kahler was also there. I mentioned that Mr. Ammerman or Mr. Gudelsky, the other trustees were never there.

Q. See if this refreshes your recollection. These are minutes of the School Board.

Mr. Charles Bresler appeared before the Board to discuss school sites in Greenbelt. Mr. Bresler pointed out that he had paid Mr. Ben Dyer $1500 to determine where the school site should be located in the best interest of the City, School Board and himself. At one point Mr. Bresler indicated a possible selling price of $7,500 per acre for his land, but he further pointed out that if they could make maximum use of their land then they could almost donate the land for the site.

Now this mentions, I mean does not mention Mr. Lerner or Mr. Gudelsky. A. What date was that?

Q. September 16, 1964. A. '64? When was the school site actually consummated in '64?

Q. Don't you know? A. No, I can't recall, honestly, Mr. Clark. You are giving me dates all over the place and I just can't put it [445] — when was the school site controversy closed? When did they break the ground? '66 wasn't it?

Q. I don't know, Mr. Bresler. A. At this — this was about a year and a half before.

Q. Did you not testify the discussions involving the school site started in 1964? A. I think they started in '63.

Q. Don't these indicate that you were at this time appearing before the School Board and suggesting discussions with them where you should locate the school site on your property, making recommendations? A. I didn't deny that. I said of course it was. That is the way it happened.

Q. Isn't it a fact, Mr. Bresler, the School Board itself referred to this property, Parcels 1 and 2, as the Bresler property? A. I don't know if they did or didn't.

Q. See if that refreshes your recollection, that letter to the Superintendent of Schools.

Isn't it a fact this land was referred to continually by the School Board and other public officials as the Bresler property? A. I never saw this letter before and I don't know that it was or wasn't.

It says known as Bresler property and is spelled [446] incorrectly. I don't know why it is known as that.

Q. Now did you meet with the City Council of the City of Greenbelt regarding the location of the school site? A. I am sure we did, yes. We met with the City Council regarding the school site numerous times and I don't know whether it was strictly location of the whole business. I am just not able to recall.

Q. Do you recall attending the meeting in July of 1965 at which the school site was being discussed?

A. I can't give you the date. I attended meetings with the Council when the school site was discussed.

Q. And do you remember a proposal being made to the effect that you would be willing to agree, you or your partners or the group or the venture, the trustees, the corporation or the association, whatever it was, would be willing to agree to a price for Parcel 15 up here in the northwest part of the City, which you owned, if the City would be willing to go along with your request for R-30 zoning on Parcels 1 and 2? A. No, sir, that was not the way it was stated.

Q. That was not the way it was stated? A. No, sir.

Q. How was it stated? A. According to the record, if I can take the City record if it was incomplete, it states that they would [447] support our zoning request, not fight our zoning request, for Parcels 1 and 2 which was in accordance with the duly adopted Master Plan of Maryland National Capital Park and Planning Commission, according to the laws of Maryland.

* * *

[452] Q. As I understand your testimony, after some jockeying back and forth and negotiating and everything else, the School Board finally decided to locate the school site on Parcels 1 and 2 after you offered to sell them half the land or give them half the land free; is that right? A. No, sir.

Q. Is that a fair statement? A. No, sir, it is not a fair statement.

* * *

[456] Q. Wasn't that what the controversy was about, whether it should be on 15 or 1 and 2? A. I agree with that.

Q. You agree with that? A. Yes.

Q. Didn't the School Board ultimately decide to put it on 1 and 2? Isn't that what the local controversy is all about? A. Yes, they did.

[457] Q. All right, didn't you in your testimony this morning offer to donate part of the land to the School Board? A. I didn't, no. The trustees did.

Q. And you weren't one of the trustees? A. Yes, I was.

Q. So you were one of two or three people that did it? A. One of three trustees; correct.

Q. Now, Mr. Bresler, do you feel that gracious offer on your part had any influence in the School Board's decison? A. I would think it very definitely did.

Q. Do you think it influenced the decision? A. Their decision was made as to what the school site is going to cost them.

Q. Right. All right, now Mr. Bresler — A. And again you say my offer. It wasn't my offer again. Please be correct, Mr. Clark.

Q. Well, you are not incensed because that gracious offer to donate school land was in your name, were you? A. You keeping saying me. This Greenbelt News Review — this is the whole purpose of this case, Mr. Clark.

Q. You are one of three people? A. But why did they always pick me out. Week after week, beating on me alone. They didn't say Mr. Lerner did this or Mr. Gudelsky did this or the State. Week after week. [458] Greenbelt News Review said Mr. Bresler, Mr. Bresler, Mr. Bresler. Even when Mr. Bresler was not involved he was responsible for water in the lake, for oil, for drainage, for this and that, even now.

* * *

[459] Q. Mr. Bresler, do you believe the citizens of Greenbelt had a legitimate interest in where the school was going to be located? A. Yes, I believe all citizens have an interest in where schools are going.

* * *

[460] Q. Are you aware at the time that on or about June of 1966 that you had received a number of complaints from the homeowner in the area of homes which had been developed in this — in the Lakeside extended area which was built, I take it by Charles Burton Builders. Hadn't Charles Burton Builders received a lot of complaints from homeown-

ers? A. I don't know whether Charles Burton Builders received a lot of complaints or not. You must remember, Mr. Clark, that I was very inactive at that particular point in the corporation. My interest was not a majority.

Q. Your interest in Charles Burton Builders was very inactive? A. I beg your pardon.

Q. Your interest in Charles Burton Builders was very inactive at that point? A. Yes, I would come in the office on infrequent basis. I would sign a few letters, I would stop in. I was busy with other projects at that particular point.

* * *

[462] Q. Do you recall receiving a number of complaints from homeowners in the Boxwood and the Lakecrest area addressed to you, either personally or as a Director or as a representative of Boxwood Village or as a representative of Charles Burton Builders? A. Yes, I did.

[463] Q. Did you receive a number of those? A. Every time the News Review published an article and mentioned my name the phone would ring and everybody would come to me. I received complaints to me personally from subdivisions I had nothing to do with, Mr. Schultz and the rest of them, and that is the whole purpose of this case, Mr. Clark. They held me out individually. I would tell these people by telephone, who would call up, who to contact, whether it was Charles Burton Builders or Ivy Homes or any one of the others, I would do that. And they sent me a letter and I can't recall letters coming in, or sent it to the company and addressed it to me, someone would prepare an answer to them. They even got so far as total strangers coming up who were just living in Greenbelt, stuff built two or three years ago by other companies coming to me.

Q. When you answered these letters did you point out to these people that you really had no interest in the property? A. I don't know, Mr. Clark, I really don't know.

Q. I show you a letter, Mr. Bresler, dated January 26th to a Mr. Austin Green.. Did you point out to

him that he is talking to the wrong person? A. I know Mr. Austin Green personally and I spoke to him on numerous occasions. You might qualify who Mr. Austin Green is. He is a City Policeman and Police Sergeant who [464] was on the City Police Force, and he came to me and asked me for my help and to check on what went on out there.

Q. And you answered him on behalf of the corporation that built that, right? A. That is correct.

Q. Now Mr. Bresler, you testified a little earlier that you really had nothing to do with Boxwood Village at this time, that you were simply, how did you put it, an accommodation officer, you remained as an accommodation to these people. A. I explained earlier, Mr. Clark, the people in — the principals in Boxwood Village were Mr. Gudelsky and Mr. Lerner. Mr. Gudelsky and everything was up in the estate. Although I had sold my interest some time ago, the estate was a little sticky. The builder who built the buildings left the job, the company went bankrupt, the next person went bankrupt, the Ivy Homes, who built them, were going down the drain and Kings Point went out and all the while the estate and my interest in the estate, not the estate, the ground which was originally the interest in the ground, was in jeopardy so I stayed around and I served in whatever capacity I could as an accommodation officer wherever it was, but I had no real interest in it, I didn't go to a job on a regular basis, I very rarely stopped by, I would meet with the principals once a month and discuss it and I think [465] I made that very clear this morning.

Q. Mr. Bresler, I show you an affidavit you signed on April 25, 1966 and which was filed in this Court on May 3, 1966 [Defendant's Exhibit 36], which is just about a month before that article. How do you describe your functions with Boxwood Village as accommodation officer? Read the first paragraph.

That he is Vice President of Boxwood Village, Inc., a Maryland Corporation and as such makes all final decisions with regard to the sale of houses, develop-

ments of the subdivision known as Boxwood Village, Prince George's County, Maryland. A. Well, what is wrong with that?

Q. Is that your non-function? A. That is good as function as any, looking it over before the contracts could go out. I would probably be shown the contracts and I presume that that is the final decision.

Q. Now Mr. Bresler — A. I don't believe I signed any contracts. Let me put it that way.

* * *

[468] Q. Well, let's put it this way, Mr. Bresler: In your own mind you had been an announced candidate for the Comptroller. Do you think the citizens would have a legitimate interest in knowing that a number of people in their community had started legal proceedings with respect to some of your activities in that community? A. Against me? None of them have. That isn't the whole complaint. You are stating would they be interested if they had filed a suit against me. I am sure that would be public interest and I am sure every newspaper in the State would report it.

* * *

[469] Q. Now Mr. Bresler, what do you understand is the meaning of "blackmail" as used in the article? A. I don't know what blackmail as used in the article. I know "blackmail" is a crime. It is a crime in Maryland, [470] that if you are guilty of that you go before a jury and you should be sentenced and I know it is one of the most heinous crimes that I could think of.

Q. What do you understand the crime consists of? A. I am not a lawyer to understand what the crime consists of. I know it is blackmail, is a crime, and that is all I am interested in.

Q. What does it mean to you as a layman? What does it mean? A. Blackmail means if I stick a gun to your head I guess and say if you don't give me a thousand dollars I will pull the trigger.

I don't know, I am not a lawyer, Mr. Clark.

Q. Does this article charge you with trying to extort money with a gun? A. Oh, Mr. Clark, now come

on. Please, you asked me. I told you. It doesn't — it charges me with blackmail. It refers there as a blackmailing scheme. It didn't do it once, but did it on a number of occasions. They sent it to my wife and kids. They sent it to my banks, they sent it to my bank and vilified me in Greenbelt. Look at this crowd out here looking at me. I guarantee not one of you think I am not a blackmailer after reading that article.

Q. Mr. Bresler, I want you to understand — I want to understand what you understood was supposed to have been [471] covered. A. The article charged me with a crime, not once but on numerous occasions.

Q. What kind? A. The crime of blackmail.

Q. But what conduct were you supposed to have done? A. I don't know, I would have to go through each article and pick it out individually.

Q. You know what it said, we have gone through this on the deposition. I want to make you understand.

You read that article and you interpreted that article as charging you with a crime? A. It makes no — yes, that is what I interpreted it as. The crime of blackmail.

Q. Have you talked to anybody that agrees with you? Have you talked with anybody that agrees with you besides your lawyer?

MR. CHASANOW: If Your Honor please, I don't think that is a proper issue.

MR. CLARK: Certainly the way the article is understood is an important question in this lawsuit. It goes to the measure of his damages.

MR. CHASANOW: No, sir, the word "blackmail" is libel per se.

You know that.

[472] THE COURT: The Court is going to overrule the objection. I don't think that will make any difference. He can answer the question. Overrule the objection. You can answer the question.

BY MR. CLARK:

Q. Does anybody agree with you? A. I don't know, Mr. Clark; I can't remember. I was so upset when I

saw this, not once but numerous times. I didn't go around asking people. I know I had questions about what is going on in Greenbelt. People were coming up who were total strangers, how are you doing in Greenbelt, what is happening out there.

This is not just one person, but numerous persons.

Q. Now have you ever seen the term "blackmail" used in the newspaper as a colorful means of describing conduct which is perfectly legitimate? A. I don't think I have.

Q. Never have? A. Colorful means? I guess it would be pretty colorful.

Q. I want to show you this article that appeared in the Baltimore Sun yesterday, day before yesterday.

MR. CHASANOW: If Your Honor please, I don't think that is proper evidence.

THE COURT: The Court is going to sustain the [473] objection to that.

* * *

DEFENDANT'S MOTION FOR DIRECTED VERDICT

[499] [MR. CHASANOW] This was not a disinterested statement. This was a calculated statement, a statement calculated to be published in the paper to injure the plaintiff because there was no reason to use the word "blackmail" in connection with anything that was done or said by the plaintiff, or which occurred at that meeting.

We think this is clearly a jury question, one that the jury must determine from the facts involved. We don't think the constitutional protection applies in this case in any degree whatsoever.

THE COURT: Anything in rebuttal, Mr. Clark?

MR. CLARK: Unless Your Honor has some question.

THE COURT: Very well, the matter the Court must, at this time, determine is whether or not there is any evidence with all due consideration being given with the most favorable interpretation of the evidence on behalf of plaintiff, is whether or not there is sufficient evidence at the present time, for the matter to proceed further and to not have it dismissed for

that reason. The Court finds, as a matter of fact, that the evidence in this case, fully recognizing the constitutional right of freedom of the press, in all of its present glory and concurs that it should be that way, the Court does not disagree with any of the cases cited by counsel and the judge must in this instance apply the facts to this law.

[500] This gets to be the problem, gentlemen. The Court is familiar with the Sullivan case, the Court is familiar with the Butts case and the Court is familiar with the Pulvermann case and the Hill case and has read them.

And for the facts in each of those cases, the Court does not disagree.

Now the problem here is applying the facts that we have with one half the case before me to the law. The Court finds that the plaintiff has introduced evidence, the jury has heard evidence, indicating that certain members of the Greenbelt Housing, Incorporated, and a CFPG instituted what they identified as the preservation of the philosophy of Greenbelt. It is rather apparent from the evidence at this stage of the proceedings and the evidence at this stage of the proceedings does report the fact that both the corporation, the Greenbelt News Review, Inc., and Mr. Skolnik, as an individual, took a very active part in both G.H.I. and CFPG and also the evidence is in the Court and for the jury to evaluate just exactly what that activity was. They have the right to determine the evidence that Mr. Skolnik gave them.

As to what the participation, his participation is, his wife's participation, and I don't use this as a husband and wife team as such, but it is rather apparent in the category of husband, I believe the President of the [501] corporation, the official of the corporation, on an editorial board and she as a pretty independent minded reporter.

So we have these facts, Exhibit 1 alone is a quote from what took place at a meeting, a public meeting, and the Court, my opinion may well be that it was fair comment at that stage of the proceedings. Because

the quote was followed by a comment by Councilman Dave Champion. In his observation that there was blackmail, he denied this, explained that he would rather refer to it as a two-way street, that the Court considers effective reporting. But the Court finds that the newspaper black lined that paragraph with what we all, and the jury may well consider, a very infamous offense. That is an allegation that someone is attempting to extract from another individual or from public official, something of value by their influence as in this instance. And the Court would observe that it observes, that the demeanor, that Marjorie Bergemann, the lady who made the statement, is known to be a member of G.H.I. and a member of CFPG and I don't rightly recollect why the two question marks were for writing a news article for News Review, but suffice it to say she was very active.

Now, of course, that was reported by Dorothy Sucher, or the by-line would indicate, testimony would indicate that either Mr. Skolnik or some duly authorized member of the editorial board was always present to review [502] these publications.

The second exhibit, I believe it was, the second exhibit, is newspaper of Thursday, October 21, which was one week later, wherein the same thing again was published under Dorothy Sucher's by-line. Only this time Albert Herling made the statement. We find Albert to be a member of G.H.I. on the Steering Committee of CFPG. It looks like he is not a staff member of the paper. And while the Court doesn't think my judgment should prevail in this case, would observe at this stage of the proceedings that where did Mr. Herling come with the word "blackmail"?

He got it from the previous issue of the newspaper, of the News Review, and he repeated it and Dorothy Sucher again made it a part of her feature article on this subject.

The question then that I must determine was whether there is sufficient evidence at this stage of the proceedings with all favorable consideration being given to the testimony and exhibits of the plaintiff,

whether or not he has failed to make out any evidence to justify the case going forward, with full recognition of the constitutional provision of the freedom of the press and the right to publish fair comment with due consideration being given to privilege communication, with due consideration being given to the necessity for malice or disregard for the truth or falseness of an allegation.

The Court can only conclude there is evidence at [503] this stage of the proceedings and would have to deny the motion for a directed verdict.

But the Court would advise that the mere fact the Court has pointed out these two exhibits, it considers all of the evidence that the plaintiff has considered, but as a principal basis I used these two exhibits to cite this situation. But the opinion is not only based on these two exhibits, but the testimony of Mr. Skolnik and others as to the activities of the paper in the solicitation for funds for institution of litigation against the defendant, Charles Bresler. We think all of this evidence will be considered by the jury and there is sufficient evidence the matter should not go out on a directed verdict.

* * *

[504] EDGAR L. SMITH

a witness called by and on behalf of the defendants, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REICH:

* * *

[505] A. I am presently the Mayor of the City of Greenbelt.

Q. How long have you been serving as Mayor of Greenbelt? A. This is my third term. It has been about four and a half years. About four and a half years. I served on the City Council prior to that '59 to '61 and I was City Attorney for about six months.

* * *

Q. Has this gentleman appeared, Mr. Bresler appeared before the City Council at various meetings? A. Yes.

[506] Q. Now Mayor Smith, do you recall meetings that were held in the year 1965 concerning the location of a school in the City of Greenbelt? A. Yes, sir.

Q. I refer you specifically, Mayor Smith, to a meeting held on October 11th and for that purpose I will refer you to what I believe is Plaintiff's Exhibit No. 1.

THE COURT: What year was that, Mr. Reich?

MR. REICH: That is October of 1965 if Your Honor please.

BY MR. REICH:

Q. I show you an article entitled Plaintiff's Exhibit No. 1 with the heading "School Site Stirs Up Council" and "Rezoning Deal Offer Debated".

Have you seen this article before? A. Yes, I have seen it before.

Q. If it is necessary for your recollection to look it over I have this question, Mr. Mayor.

Do you recall that meeting? A. Yes, I recall it. I can't recall every specific comment or anything, but I can recall the meeting.

Q. Do you recall the question of the School Board site? A. Yes, sir.

Q. I then refer you, for recollection purposes — [507] I am sorry. May I have this?

THE CLERK: Yes.

BY MR. REICH:

Q. To Plaintiff's Exhibit No. 2, another article which appeared in the Greenbelt News Review, entitled "Council Rejects by 4-1 High School Site Deal".

Would you look at that and see if it refreshes your recollection, Mr. Mayor? A. I recall this meeting, too; yes.

Q. Did you preside at both these meetings? A. Yes, I did.

Q. Can you tell us what the subject matters of those meetings were, Mr. Mayor, with reference to

the School Board site? A. Well, the subject matter of the meetings was whether or not the City Council would recommend R-30 zoning on what is known as Parcel 1 and 2 in exchange for the property owner making available Parcel 15 as a school site.

* * *

[508] Q. With that as a basis,then, so you have the chronology, in 1965, in those two meetings in October of '65 what was the proposal of the developer and first who was the [509] developer you are referring to? A. Well, the property owner was Consolidated Syndicates as I recall and again I am speaking from the information given to us by the City Manager. The property owners of — the one who owned Consolidated Syndicates is Mr. Bresler, Mr. Lerner and the Gudelsky estate.

* * *

[510] Q. Was there discussion also at the meeting of October 11th, before the City Council? A. Oh, yes.

Q. Do you recall the discussion in a general fashion? A. Yes, in a general fashion.

Q. Was it a heated discussion? A. Yes, it was pretty — I think the 17th or 18th was more heated, as I recall, than the one prior to that. But both —

* * *

[511] Q. Did you see anything in the articles which I have just shown you that reported this meeting improperly? A. Let me see the articles again, please.

Q. Please do. A. I don't know if I recall.

Certainly nothing in here that reports the meeting any different from the way it happened. This is pretty much the way it happened. If I would say anything, it is rather conservative in presenting some of the comments.

Q. Go over that again? A. I say if anything they were conservative in presenting some of the comments that were made at the meeting because they certainly didn't present all the comments that might have been unfavorable to the Estate of Gudelsy.

Q. Would you hold your voice up, Mayor Smith? Did you hear Mr. Bresler being accused of a crime at this meeting? [512] A. No, I didn't understand that there was any accusation of a crime. There were some statements to the effect — people were irritated because there had been a proposal of this swap in classification, favorable zoning in exchange for the school site, but there certainly wasn't any indication that I can recall, that he was accused of any crime.

* * *

[514] MR. CHASANOW: If Your Honor please, I would also like the record to show that I will object to him impeaching his own witness. The witness has already stated there was no statement made as to any crime.

* * *

[516] BY MR. REICH:

Q. Mayor Smith, were you present at the meeting of October 11th, referred to in that edition of October 14th? A. Yes.

Q. And have you read the story of that meeting as [517] reported in the Greenbelt News Review? A. Yes.

Q. To the best of your knowledge is this a fair and accurate report of that meeting? A. I would say it is fair and accurate.

Q. And similarly, Mayor Smith, I show you Plaintiff's Exhibit No. 2, which is a report of the meeting of the City Council of the City of Greenbelt on October 18th. Were you present at that meeting? A. Yes, I chaired the meeting.

Q. Did you preside at that meeting? A. Yes, I did.

Q. Do you remember the motion referred to in that? A. Yes, I remember the motion.

Q. Is that report a fair and accurate report of that meeting? A. I would say the report is a fair and accurate report of the meeting.

* * *

[528] Q. Now Mayor Smith, you have testified you have lived in a G.H.I. Home? A. Yes, I have.

Q. And you are a member of CFPG? A. I am a member. I don't know if my dues have been paid this year. I may have been dropped.

* * *

Q. Are you familiar with Mr. Skolnik? Do you know Mr. Skolnik? A. Yes, I do.

Q. Are you an enemy of Mr. Skolnik? A. I hope not.

[529] Q. Could you be classified in general as a friend? A. Yes.

Q. Now there is a listing of various people here and I won't belabor the names of these people with you, but I would like to ask you, Mayor Smith, whether you are part of any conspiracy to libel Mr. Bresler? A. No, absolutely not.

* * *

CROSS EXAMINATION

BY MR. CHASANOW:

* * *

[530] Q. When did you propose that Mr. Bresler proposed to build a high-rise apartment? A. We first found out around, I believe it was January 17th.

Q. That was when the City Manager informed you? A. Yes.

Well, I don't think he actually informed us then that Mr. Bresler was proposing a high-rise apartment. Again, as I recall, thinking back, I don't think that even in January there was any indication from us, again with the possible exception of this lost letter that Mr. Bresler attempted to breach the covenants.

Q. So you had no knowledge that Mr. Bresler planned to build a high-rise apartment? A. I don't recall anything.

* * *

[533] Q. I show you a document marked Plaintiff's Exhibit No. 34, which is headed "City of Greenbelt" dated October 22, 1965 to the Mayor and Council.

Now incidentally, before I go any further, I said January '65. This was January '66, wasn't it, the

letter that was supposed to have been sent in December '65? A. I think it stated December '66.

MR. CHASANOW: Mr. Reporter, will you please correct the record to show the mention of January 17 was in 1966?

Good.

Now that is entitled Manager's Report for Week Ending October 22, 1965.

THE WITNESS: It looks like our memorandum.

BY MR. CHASANOW:

Q. That is your City Manager's memorandum? A. Yes.

Q. Would you read to the Court the paragraph, second paragraph, beginning "Mr. Bresler has also obtained"?

[534] A. "Mr. Bresler has also obtained permits for the construction of 24 additional town house units in Charlestowne Village. These buildings are under construction. The following is a breakdown of units constructed or to be constructed on the property covered by this agreement:"

Do you want me to read the whole thing?

Q. Yes.

A. "Constructed	120 units
"Under construction	24 "
"To be constructed	
High Rise	183 "
Garden apartments	490 "
Total	817 units

"The covenants permit 7 units per acre, or 353 units.

"Mr. Brooks has been requested to prepare to take action to enforce the covenants."

* * *

[535] Q. Isn't that your City Manager's report to the City Council? A. It looks, yes, I would say it is the City Manager's report.

Q. Did you get a copy of that report? A. I assume I got one, I normally do. I don't recall this particular one.

Q. Doesn't the fact Mr. Brooks, who was City Attorney was instructed to take action indicate that you not only had a copy, but instructed the City Attorney

to do something about it? A. That is what it says here.

Q. Why wasn't suit filed within 30 days from October 22, 1965 in accordance with the declaration of covenants? A. There are two or three other paragraphs. Maybe if I read all of these.

Q. Fine, read them all. A. Yes, I think the reason — I am thinking back now. I know that Mr. Bresler had some application for building permits filed and. I can't recall now whether they were actually taken out — I don't think they were. Maybe they were, but again, we had had communication with Mr. Bresler, if you recall, I don't know whether you were there or not, [536] but Mr. Bresler was there at the Council meeting when we discussed the swimming pool site and this is when he stated at that time, that you had no plans for building an addition to Charlestowne Village, in his Charlestowne Village property and we were assuming that he intended at that time to live up to his word to the City Council at the public meeting.

Q. Well, you said he was prepared to live up to his word. Would you read that sentence? A. Mr. Brooks had requested to take action to prepare to take action. There is no question we told the City Manager to follow up on the Charlestowne Village site and if it appeared Mr. Bresler was preparing to develop beyond the covenants to file a suit for injunction.

Q. Then you as Mayor and you as the Chairman of the Committee which was mentioned in the covenants — A. Yes, sir.

Q. And you as an attorney, knew that the covenants required that if you did not want Mr. Bresler to build the high rise, if you had any objection, the covenants specifically provided that you either took action within 30 days or you were automatically by not taking action, waiving any objection you had; correct? A. That is not correct.

The covenants said that the City's right to take action would be 30 days from the date that Mr. Bresler [537] notified us that he was going to build in excess of covenants or in breach of the covenants.

* * *

[540] Q. Now on the school controversy there has been a report that there had been discussion between G.H.I. and the City about the school. And as I understand from the report to the News Review and correct me if I am wrong, G.H.I. said we don't want the school on Parcel 1 or 2. We want the school on Parcel 15 — on Parcel 15. And we would rather have no school at all than have a school on Parcel 1 or 15.

Is that a correct statement of G.H.I.'s position? A. That is how I understand G.H.I. I cannot speak for G.H.I. I can only speak for the City's position. This is my understanding of G.H.I.'s position.

* * *

[542] Q. Were you ever a member of that Steering Committee? A. Yes, I was on the Steering Committee a couple years ago.

* * *

[543] Q. Did you have to join CFPG to help the City support the Master Plan? A. Well, I joined CFPG because I thought it might be another possibility of support, particularly if we went to Park and Planning Commission, like we had to do on that Plan 13, where we had approximately 1,000 people at the Center School opposing Plan 13.

I think it was a good medium for getting the people out to support the City.

* * *

[545] Q. I have forgotten this, Mr. Smith, but I note the first article — I refer you to the Greenbelt News Review dated Thursday, July 17, 1966, which is identified as Plaintiff's Exhibit No. 12. Do you remember that article, entitled CFPG Drive Under Way?

Well look at the bottom part first, Mr. Smith. Then we will get to the top. A. I remember the article.

Q. You were a member of CFPG at the time, were you not? A. I am sure I was at the time.

Q. Weren't you on the Steering Committee at the time? A. Yes.

Q. Didn't you have anything to do with the drive to collect legal funds to file suit against Mr. Bresler? A. I was a member of the Steering Committee at that time, but I think my activities were practically nil, because I had other duties.

I didn't participate in the membership drive.

Q. Mrs. Skolnik was a member of the Steering Committee, too, wasn't she? [546] A. I think she was.

Q. As a member of the Steering Committee, didn't you attend meetings? A. I attended some of them, but again because of some other things going on, I attended maybe 50 per cent. I may not have attended that many, maybe 25 per cent.

Q. At the 25 per cent do you recall any discussion of collection of legal funds to file suit against Mr. Bresler? A. Not at any meetings I attended.

Q. Didn't you, as a member of the Steering Committee, join in the recommendation that a second front be opened against Mr. Bresler, in addition to the City's suit to be filed against him? A. I don't think this was discussed at any meeting I attended. I am almost positive.

* * *

Q. I see the News Review had a nice picture of you on the front page with a picture, "Smith to run for State [547] Senate." A. That is correct.

Q. Are you a good friend of Mr. Skolnik? A. I think I am a friend of theirs. I don't think I am more of a friend than any other person on the City Council or anybody else in the City Council. I must say I am a friend of Charlie, also.

Q. You are? What are you doing here? A. Concern for — in the matterof justice.

Q. I see. Were you subpoenaed, Mr. Smith? A. No.

Q. You came voluntarily? A. That is right.

* * *

[550] Q. Did you, as a member of the Steering Committee of CFPG have to make any recommendations to the City Council for which you were Mayor,

which conflicted with the City's own proposals or things? A. No, no; absolutely not. As a matter of fact, I don't think I ever made any recommendations. I may have voted on something when I was on the Steering Committee, but I don't ever recall making any recommendations.

No recommendations that I voted on was ever conflict or disagreement with any positions.

Q. Did you ever voice any opposition at all to any of CFPG's recommendations? A. I don't think I attended that many meetings.

Q. What I am saying is this: did you as a Mayor, ever vote contrary to any of CFPG's recommendations? A. I don't recall ever voting contrary to their [551] recommendations, but I think in the recommendations that they made to City Council I think the City Council was pretty much agreeable. I don't think the Council voted contrary to their recommendations.

Q. It was one hundred per cent unanimity? A. I don't recall that. The biggest use with the covenants, Charlestowne Village, the zoning pending I think CFPG and the City Council's position or the City's position was parallel and I don't think there was any, at least on those issues there was no disagreement. The only things I can recall ever come before City Council.

Q. Did you ever serve as a delegate to the County Commissioners with Mr. Skolnik and other representatives as a representative of CFPG? A. County Commissioners?

Q. Yes. A. I don't think so. Delegate to the County Commissioners? No, I don't recall ever serving as a delegate.

Q. Let me refresh your recollection. Let me show you Plaintiff's Exhibit No. 19, Greenbelt News Review dated Thursday, May 16 — I am sorry, May 13, 1965 and I ask you to read the headline and the first two paragraphs of the article, Columns 1 and 2. A. I recall the meeting, yes, I was there. I don't recall whether I went there —

* * *

[553] Q. I show you Plaintiff's Exhibit No. 35 — (News Review, dated April 8, 1965 was marked for identification Plaintiff's Exhibit No. 35.)

— the Greenbelt News Review dated Thursday, April 8, 1965 and I refer you to the article in the last two columns headed "'Save Greenbelt' Group Gets Officers, and Name - CFPG."

Down in the article, would you read to the Court the portion which has been circled in black, beginning with the "The Steering Committee —"? A. "The Steering Committee also set up the following committee:

"Membership - Charles Schwan

"Official Liaison - Edgar Smith —"

Q. Is that Schwan the same one who is the President of G.H.I. Board? A. Yes. I would like to say this. If I can recall — I can recall the article, but again, it must have been a non-operating committee because I never did anything in its capacity and this right here, back to this, this was [554] as a result, if I recall, of the City Council's opposition to the Greenbelt Master Plan and — excuse me, Master Plan or Plan 13, Area Plan 13. And I don't recall at that particular time whether we went down as a delegate. I don't think I did. I think I went down as Mayor of the City of Greenbelt and I think when you read this it says delegates from CFPG to County Commissioners. But I am sure when I went down and spoke to Commissioner Baggett, I was speaking as Mayor of the City of Greenbelt.

Q. Did you take issue with the article, tell the News Review "you made a mistake" that you were not a delegate from CFPG, but the Mayor of the City? A. No, I didn't tell them I was Mayor, because I was there in a dual capacity. As Mayor, as delegate from CFPG.

* * *

[555] Q. I notice Chairman, according to the same article, Chairman of Public Relations Committee was — who was that? A. Public Relations Committee is Albert Herling.

Q. Is that the same Albert Herling who spoke up at that meeting that counsel for the defendant referred to where there was a lot of heated discussion? A. You are talking about the meeting of October 17th or 18th?

Q. Yes. A. Yes, he spoke at that meeting.

Q. And was it his job as Public Relations Chairman to speak up on behalf of CFPG at these meetings? A. If he was speaking on behalf of CFPG that night as I recall he didn't indicate he was. I think he was [556] speaking as a private citizen, which he did long before CFPG came into existence. Al never hesitated to get up at Council meetings and express himself. It is not unusual for him. He has done it for years.

Q. Did he ever make intemperate remarks like the one he made that night? A. Like I say, if you know Al, he doesn't hesitate to say what he thinks, regardless of whether it is — he has made some pretty sweeping statements before at Council meetings since I have lived in Greenbelt and attended Council meetings.

* * *

[557] Q. Was there anything discussed at that meeting which justified the application of the words "Blackmail" or "blackmailing scheme" to Mr. Bresler? A. Are you asking me now whether the News Review was anything justified in the News Review making the comment? Because the only thing I can say is this: that Mr. Herling was the speaker and he was the one who used the term. Now [558] he made a speech, he used several other words that were rather strong and he definitely used the word "blackmail". And this, I assume, was the basis of the News Review putting it in the newspaper.

Q. I am not asking you to justify the News Review stand. You may do this later if you want to. I am merely asking you the question, whether you as an attorney, and you as the Mayor, who presided at that meeting, and who heard everything that went on, heard anything in the course of discussion at either of those

meetings, to justify the application of the word "blackmail" or "blackmailing scheme" to Mr. Bresler? A. I will put it this way: if I had been speaking before Council I would not have used the word "blackmail" but —

Q. I am not asking whether you would have used it or not. I am sure you would not, Mr. Smith. The question is, and let me repeat it for the third time, was there anything that was discussed at that meeting which merited or justified the use of the words "blackmail" or "blackmailing scheme" to Mr. Bresler? A. I don't think there is anything that could have been — no, I don't think there is anything that was discussed prior to Mr. Herling's speaking on that particular evening that could have in my opinion, you know, that could [559] have justified the use of the word "blackmail" but I think that Mr. Herling, again, in consideration of the whole subject that is before him, and considering his whole speech, I think he explained really that he wasn't saying, as a crime, but he was speaking in terms of Mr. Bresler working —

* * *

Q. You are talking about Mr. Herling. Let's talk about the week before, Mr. Smith, when two other people used the word "blackmail" and "Blackmailing scheme". That was at the meeting of October the 11th, the week before Mr. Herling had his say.

Now what, can you tell me whether there was anything that was discussed at that meeting, which justified the application of the word "blackmail" or "blackmailing scheme" to Mr. Bresler? A. Not that particular word. I think there was some discussion that could have caused the people to make some pretty strong statements about Mr. Bresler.

Q. I am talking about the words specifically [560] "blackmail" and "blackmailing scheme", which was quoted in the News Review.

Let me repeat the question. A. I think I have had —

Q. Do you understand? A. Yes.

Q. Would you understand the question: Was there anything which justified the use, the application of

those words to Mr. Bresler? A. You are asking me in my opinion whether there is anything.

Q. Right. A. In my opinion there was nothing to justify the use of the word "blackmail" by anyone from the audience. And there is no evidence, if there had been any, of course, I think there was some pretty strong evidence, but I don't think there was any actual evidence that would have justified anyone, any fact before Council, that would have justified the use of "blackmail".

Q. You heard the whole discussion? A. That is correct.

* * *

[561] Q. Would you say that the words "blackmail" or "blackmailing scheme" were fair comment on what Mr. Bresler was proposing, which was discussed at those two meetings? A. I would say that the individual who made the comment, based on the facts that were before the Council — there was nothing that I know of, that they had any fact that they had, which would justify the use of the word "blackmail". If they had something other than what they presented at the Council.

Q. I am asking you specifically, would you term this fair comment? A. Would I term Mr. Herling or Mrs. Bergemann's — [562] would I term their comments favorable on that?

Q. Would you term the use of the word "blackmail" or "blackmailing scheme" fair comment on Mr. Bresler's activities or proposal which was discussed at those two meetings? A. I would say that based on the fact and information that we had, that "blackmail" or "blackmailing scheme" was too strong a word. Again if we had any indication other than that we would have taken some action. If there was any evidence that there was blackmail, any definite evidence of anything like this, the Council would have taken some action.

Q. You, as Mayor, would have told your Police Department to do something, wouldn't you? A. Yes, we would have gone further than that, the State's Attorney's Office probably.

Q. Mr. Smith, I notice in one of the articles Councilman Champion got up and said, "This is not blackmail, this is a two-way street."

Did you get up and make the same assertion or defend Mr. Bresler against any charges of blackmail at any of these meetings? A. Did I defend Dr. Bresler?

Q. Or did you deny to the audience as Councilman Champion had? A. No, I did not deny to the audience.

Q. Haven't you at Council meetings had occasion to [563] admonish members of the audience against intemperant or violent language? A. I have on occasion, yes.

Q. Why on this occasion if you didn't feel "blackmailing" was an appropriate word? A. Normally when I exercise the rights under the standing rules, the case where there are two factions involved and it appears they are getting into too many arguments, otherwise I give them pretty great latitude, in presenting their comments to the City Council.

Normally I don't invoke the standing rules, but when it appears it is getting out of hand or people are arguing too much back and forward, I will do it.

Q. After Mr. Champion, though, got up and said this isn't blackmail, did you feel impelled to make the same statement? A. No, of course not.

* * *

REDIRECT EXAMINATION

BY MR. REICH:

Q. Did you understand, Mayor Smith, anyone was charging the crime of blackmail at that meeting? [564] A. No, I didn't understand anyone at the meeting to be charging anyone with any crime.

As a matter of fact, I didn't pay too much attention to it.

* * *

January 8, 1968

* * *

[574] LEWIS BERNSTEIN

called as a witness by and on behalf of the defendants, and, having been first duly sworn, was examined and testified as follows:

[575] DIRECT EXAMINATION

BY MR. CLARK:

* * *

Q. Mr. Bernstein, what is your occupation? A. I am a lawyer for the United States Department of Justice.

Q. Will you try to speak a little bit into the microphone, Mr. Bernstein, so the jury can hear you?

What is your position, if any, with the Government? A. I am the Chief of Special Litigation Section of the Antitrust Division.

Q. How many years have you held that position? A. Seven, a little more than seven.

Q. What is your Civil Service classification? A. Grade GS-16.

* * *

[576] Q. While you were in Greenbelt did you participate in any activities of a public or civil nature? A. Yes, sir.

Q. Will you briefly describe those activities? A. Somewhere in the year 1959 or early — 1959 I believe was, I was appointed by the City Council to, along with certain other citizens in the town, to make recommendations [577] for the zoning authority that the City should seek in connection with zoning matters. And on that Board were one — one of the members of the Board, the most renown member, was Rexford Guy Tugwell, who had been one of the President Roosevelt's Advisors and who formerly had been Chairman of N.W. City Planning Authority.

Q. Did you — excuse me. A. Excuse me.

Q. Did you perform any activities of a civic nature? A. Yes, sir, that body which I just described made certain recommendations to the City Council. The City Council adopted those recommendations and appointed an Advisory Planning Board consist-

ing of seven members and I was one of the original seven members appointed to the Advisory Planning Board and elected Chairman by the other six members.

Q. Did you perform any other activities of a civic nature in Greenbelt? A. Yes, sir, from the years 1963 to 1965 I was a member of the City Council.

* * *

[579] Q. Mr. Bernstein, did the plaintiff in this action, Mr. Bresler, ever appear before the Advisory Planning Board? A. Yes, sir.

Q. In what connection? A. In my recollection he appeared before — I have a recollection of having appeared before the Advisory Planning Board on two occasions. The first occasion was somewhere in or about August of 1961. He appeared with Mr. Ben Dyer, who — and Mr. Hatton. Mr. Dyer was a land planner, for planning private land, and Mr. Hatton was his assistant, and he appeared with Mr. Bresler and Mr. Bresler came with a large colored photograph of some brick colonial type town houses and they explained, when I say "they" I mean either Mr. Bresler or Mr. Dyer or both of them, explained that Mr. Bresler had purchased the land and they designated a tract of land, I could show it to you on a map —

* * *

[584] Q. Now Mr. Bernstein, was construction done on this property, to your knowledge? A. Yes, sir, while I was a member of Council construction was done on it.

Q. Can you describe briefly the construction you observed during the period — now when were you on City Council? A. I was on the City Council from September of 1963 to September of 1965.

Q. Will you describe briefly, if you can, the construction you observed at that point? A. Yes. I observed that town houses were built but unlike the layout that we had seen in 1961. There was very little space between the rows of houses. The houses were all built on the, I would say the east portion, I could show you on the map, on a portion closest to the

American Legion Home, that portion closest to Greenbelt Road. The houses were all built close together in that area and the rest of the 50 acre tract was not developed with any town houses at all.

Q. During the period you were on — a member of the City Council, did you have occasion to meet with the plaintiff in this action regarding this construction? A. Yes, sir, not really regarding the construction but it was regarding the density of the area; yes.

[585] Q. Do you recall when that meeting took place? A. Yes, that meeting took place on May 17, 1965.

Q. Can you describe to the jury, briefly, the circumstances which led to that meeting? A. Yes, there were 1, 2, 3 — there were 4 items on the agenda of that meeting that concerned Mr. Bresler and his property. One of the items on the meeting concerned his plans for construction of additional town houses in the Charlestowne Village and Mr. Bresler had been invited to the meeting specifically for two major matters. One was that he had an application to the District Council for a special exception to permit the erection of a swimming pool on part of this land that I have just described. We wanted to ask him about that. We also wanted to ask him about his plans for building additional town houses on the remainder of the property, because we had received word that he had filed a subdivision plat that showed an intention to build more units than he had obligated himself not to build in that area by covenants and the purpose of the meeting was to explore those — not to explore them, but ask him specific questions on it. On the meeting before that, in April, I, it was either I or one of the other Councilmen, either moved or authorized the City Solicitor to take whatever action was necessary to see that Mr. Bresler did not build town houses in excess of the number that he had covenanted to build in this area, because [586] we were very much concerned that he was going to do that.

Q. Did Mr. Bresler appear at that meeting? A. Yes, sir.

Q. Do you recall what took place at that meeting? A. Yes, sir.

Q. Can you describe briefly what was said at that meeting regarding the — this report of the more units on the property that you just testified to? A. Yes, sir.

When that item of the agenda came up the City Manager said to Mr. Bresler, he had filed a plan for developing a number of additional units, more than was permitted by the covenants, and then asked Mr. Bresler whether he had anything to say about that. Mr. Bresler said, "I have no plans for building anymore than 178 units."

Then the Mayor asked whether any Councilmen had any comments and I addressed a question to Mr. Bresler and I said to Mr. Bresler that we were concerned that his plans showed that he had intended to build more units than were permitted by the covenants, and he said, in response to questions that I asked him about how many units do you have there and how many do you plan to build, he said that his present plans called for building no more than 298 units, which was well within the covenants of 300 units, that he had no present plans for building anymore than that.

[587] The question was asked him several times about that and each time he said that I have no present plans for building anymore than these 298 units and he said that if I ever do, you gentlemen will have to approve it.

Q. Did Mr. Bresler state at any time during this meeting that he considered the covenants to be invalid? A. No, sir.

Q. Were you aware, at this meeting, that a document entitled a "Release of Covenants" had been filed some eleven months before, in June of 1964? A. No, sir. As a matter of fact, we —

Q. That is fine.

Were you advised at that time what the nature of construction proposed for the 178 units was? A. Yes, it was supposed to be the town houses, additional town houses of the type that were there.

Q. When did you first learn of the fact of the release of covenants? A. I first learned of the fact of the release of covenants — well it must have been — I can't give you a date, I can pinpoint an event or time.

Q. What is that event? A. Fix the date.

When the citizens had a suit or legal action to enforce the covenants in response to that action, it was [588] brought out that a release had been filed and that was the first time, I believe, that my offhand impression is — my offhand impression is that was about a year later or considerable time later.

* * *

[589] Q. Now Mr. Bernstein, as a City Council member, did you have any power to control the number of units to which a builder would develop property if he were within the zoning category which the building had? A. Not only did I not have it as a City Council member, but Council itself did not have that power.

Q. Was your — strike that question. A. Did I understand you, Mr. Clark? May I have the last question read back?

(Record read)

BY MR. CLARK:

Q. Were there any requirements that you approve the building as long as they were in the zoning category? A. There was no requirement that the Council approve any building that was in the zoning.

* * *

[592] Q. Now Mr. Bernstein, are you a friend of Mr. Skolnik's? A. I regard him as a friend, yes. I am not an enemy. He has been in my home; but I am a friend; yes.

Q. Do you know Mr. Bresler? A. Only — not personally. I know Mr. Bresler only because of his appearance before the Advisory Planning Board, be-

fore City Council and there was one other occasion, one other occasion when the Advisory Planning Board and City Council met with Mr. Bresler in Mr. Dyer's office. That is the only contact I have had.

Q. Do you have any resentment against Mr. Bresler because he is developing property that was once owned by [593] G.H.I.? A. No, sir.

Q. Are you a member of CFPG? A. I don't know that I am, although you told me that I am on the list of membership, but I don't recall being a member.

Q. Did you testify that your — strike that.

Are you a member of G.H.I.? A. No, sir.

Q. Were you at any time a member of G.H.I.? A. No, sir.

Q. Are you aware of any understanding or agreement among CFPG, Mr. Skolnik or any other member of the News Review staff of a — of any agreement or understanding to get Mr. Bresler? A. No, sir.

* * *

CROSS EXAMINATION

BY MR. CHASANOW:

* * *

[596] Q. On the matter of covenants, was this posed to be a uniform covenant throughout Greenbelt to be applied to all builders and developers? A. No, sir.

Q. Just to Mr. Bresler? A. Mr. Bresler had offered to the Advisory Planning Board, when the Advisory Planning Board stated the problem that it had, in recommending R-18 zoning, he offered to the Advisory Planning Board to put on covenants and said that, "I will give you any assurance that you need in order to guarantee that these units will not be built any denser."

* * *

[598] Q. Mr. Bernstein, have you discussed between the time Mr. Bresler testified and your testimony this morning, this matter of the number of units per acre with anyone? A. Yes, sir.

Q. And you are aware of the fact there has been testimony by Mr. Bresler on this matter of number of units per acre? A. No, sir.

Q. You don't know anything about that? A. No, sir.

Q. Has there been any discussion about a News Review article pertaining to Lakeside North? A. No, sir.

Q. Were you in on the planning, either as a member of the Advisory Planning Board or City Council, when the Lakeside North request came in? A. Yes, sir, I was a member of the Advisory Planning Board then. I was Chairman.

Q. How many units per acre were they permitted to sign covenants for? A. I don't remember the number of units but I remember the circumstances under which the covenants were entered for Lakeside North.

Q. Let me refresh your recollection.

Isn't it a fact that they obtained R-30 zoning [599] for town houses? A. No, my recollection — yes, that is a fact, but that came about in this way, Mr. Chasanow:

Mr. Garvin did the same thing as Mr. Bresler did, he came down before the Advisory Planning Board, showed his pictures, showed his plans and I told him the same thing, that I was concerned that if we went to R-18 zoning that if the title of the property changed or if his plans changed that it wouldn't — the City would have no control over them. And Mr. Garvin then said, "We will give you covenants on this land," and the covenants that he gave, or the agreement that he made with City Council then was that he would develop it according to a certain density, according to the plan he had, he then had.

He had a plan. He would develop it according to that plan, unless the District Council adopted a R-30 zoning classification. Up to that time there had been none.

* * *

[600] Q. You tell me what is correct. A. At the time Mr. Garvin came in for his zoning there was no R-30 zoning classification and the Advisory Planning Board recommended that this be zoned for R-18 or R-30 or something like that, if the zoning classification should come in. Mr. Garvin put the covenants on the land and I believe that the covenants provided that those were only to take effect or — when I say covenants, I think it might have been an agreement to give covenants or something like that, but it was to take effect only if the R-30 zoning was not adopted [601] and then when the R-30 zoning was adopted he did not have to put the covenants on or something like that.

Q. How many — you mean there was never any covenants entered into — A. Well, the covenants was entered into by City Council. The Advisory Planning Board just made the recommendation. To the best of my recollection the covenant provided, the covenant with Garvin provided that it was to be developed in a certain density unless the R-30 zoning classification came in and then he had the option of developing it at the R-30 classification or at the covenant.

Q. What was the difference between R-30 and R-18 as to type of building? A. I don't know what the difference was as to type of building, but all of the discussion that we had was that R-30 was for the town house type of development and R-18 was for apartment.

Q. So it was agreed Garvin would build town houses, not garden apartments; is that correct? A. That is correct.

Q. Are you familiar with Lakeside North? A. Yes.

Q. Have you seen it? A. Yes, sir.

Q. Since it has been constructed? [602] A. Yes, sir.

Q. Was it constructed during the time you were on City Council? A. Yes, sir, I believe it was. I was on City Council from '63 to '65 and it was con-

structed during that period. I have the recollection it was.

* * *

Q. I show you two photographs and ask you if you can identify those photographs? A. Yes, they look like the — I am not able to identify them, but they do look like the Lakeside North houses.

Q. Are those town houses or are those garden apartments? A. Well, I consider them apartments in the town house styling. This was not the kind of town houses that Mr. Garvin told us he was going to build.

Q. So he didn't keep his word either, did he? A. No.

Q. What did City Council do about that? Did it file suit against Mr. Garvin? A. My recollection was when I was on City Council, [603] and inquired about that, that we had been told that he, because he chose to develop that within the R-30 zoning category, there was nothing we could do about it and he had the Lakeside North — is not developed, all of the tract of land is not developed and because he left a lot of the land undeveloped, he was permitted to cram them all together in that one point and later on Mr. Garvin made an application for a change in zoning for additional land to develop that and City Council opposed it and it was rejected.

Q. So they opposed the R-18 for garden apartments; is that correct? A. That is correct.

* * *

[604] Q. When we talk about garden apartments, however, we talk about a group of apartments in the building, having two, four, six, eight or more, with one common entrance for that group; is that correct? A. Yes, Lakeside North is not a town house.

Q. So it is garden apartments? A. Under that definition, that is correct.

* * *

[605] MR. CLARK: Your Honor, I object on the ground what the City Council may have done with respect to Lakeside North and the covenants with respect to Lakeside North has nothing to do with whether

this newspaper libeled the plaintiff. It is completely irrelevant.

THE COURT: It is relevant, Mr. Clark, because you have covenants on direct examination, this classification to covenants to one individual. So the Court will overrule you and let it be marked as 36 and 37 and admitted into the evidence.

(Photographs heretofore marked for identification Plaintiff's Exhibits Nos. 36 and 37 were received in evidence.)

BY MR. CHASANOW:

* * *

[622] Q. What was the discussion with the covenants with Lakeside North, how many units per acre would they be permitted to build? A. Well, I don't recall that figure, but I do recall that we had the same kind of discussion with Mr. Garvin that we had with Mr. Bresler. If you can — since Mr. Garvin's application followed Mr. Bresler, I am concluding that we had some precedent for this. I don't recall the discussions as to number of units except that Mr. Garvin submitted a specific plan to us as to how many units he was going to build and so on. And I knew the figure at that time and the Advisory Planning Board nor City Council ever [623] wanted him to build anything other than town houses there or anything more dense than what he actually did build, but the City Council felt that it was powerless to take any legal action to do anything about it.

Q. Are you saying the City Council was powerless to go in and enjoin or restrain Mr. Garvin from building what we have agreed is garden apartments instead of the town houses which he had agreed to build? A. That is what the City Manager reported to Council at the, that the City Solicitor had told them, yes.

Q. Then why did they go to Court against Mr. Bresler who had a different type zoning, R-18? A. I wasn't on City Council then. I would have to tell you hearsay. If you want the hearsay.

Q. I don't want hearsay. Do you know why? A. I have no independent knowledge. My only knowledge

of the covenants is that Mr. Bresler promised that the units that the — that he would build town houses there, no more dense than seven units per acre.

Q. Fine. Was it your intention as Chairman of the Advisory Planning Board, or your intention when you were a member of City Council, that there be no discrimination for or against Mr. Bresler, that he would be afforded no more or no less, no worse or no better treatment than any other developer in the City of Greenbelt? [624] A. There is no question about that.

Q. All right, tell me why, and the record shows this, this was testimony of Mr. Skolnik, I am sorry I can't find the copy of the News Review, but the record will reflect this, that it was said when Mr. Garvin applied for his R-18 zoning that Council voted to object to the R-18 and said that he had gotten R-30 zoning and had signed a covenant that he would not build more than twelve units per acre. Why, if this is true, and this was published in the News Review, why was Mr. Garvin permitted to sign convenants for twelve units per acre, when Mr. Bresler was restricted to seven units per acre? A. I don't call that discriminating between the two of them because we were dealing, the Advisory Planning Board was dealing with a precise plan before us. When Mr. Bresler presented his plan to the Advisory Planning Board we were dealing with a plan and layout, and when Mr. Garvin, presented his plan we were dealing with a map and a layout and the number of units depended upon the open space, the recreational area, the school sites and so on.

* * *

[626] Q. I show you Plaintiff's Exhibit No. 1, which you have already talked about, the Greenbelt News Review for Thursday, October 14, 1965. I refer you in particular to the article in the second column of page 1 which says:

"New Council recommends denial of zoning petitions."

And I ask that you read the third paragraph of that article and any other portion that you may want to read.

* * *

A. The third paragraph [of Plaintiff's Ex. 1] says:

"There was little discussion. In the case of the Lakeside North application, it was pointed out that the present 19.4 acre property is zoned R-30 (14 units per acre) and the developer wants to increase the density to 21 units per acre by [627] securing R-18 zoning. The city had originally approved the Lakeside North development with covenants restricting density to 12 units per acre. Both the area 13 plan and the City's Master Plan call for the area to be retained R-30."

* * *

[629] A. The second paragraph of Plaintiff's Exhibit 23 reads as follows:

"The council had previously indicated that it would not support Bresler's application for a R-18 zoning normally for apartments unless these covenants were signed."

That is the underlined portion.

Q. Now does that refresh your recollection as to whose action it was, whether this was voluntary by Mr. Bresler or [630] whether this was the Council telling Mr. Bresler, "We will not approve your zoning unless you do this."? A. Well, it refreshes my recollection. I think we are in a semantic argument, Mr. Chasanow. I think my recollection is clear that Mr. Bresler originally made the offer to the Advisory Planning Board, not to Council, and then the Advisory Planning Board submitted a formal report to Council in which the Advisory Planning Board recommended against R-18 zoning unless covenants were placed on the land to assure no density larger than seven units per acre and I am fairly confident Council adopted that recommendation and would not recommend a zoning change unless the covenants had been placed on it; yes.

Q. All right. And once he had signed those covenants didn't it become incumbent upon the City Council or the Advisory Planning Board in order to assure fair and impartial treatment, that any further covenants would also provide the same seven units per acre? A. Not necessarily.

Q. Would there be any reason to discriminate in favor of other builders by allowing them to build more than seven units per acre if you wanted to keep Greenbelt green? A. There would be no reason to discriminate and it would not be necessarily a discrimination to permit twelve units per acre on a specific tract of land and seven units [631] per acre on another tract of land, depending upon what the builder or developer would represent that his plans were going to be. In Mr. Bresler's case he represented to the Advisory Planning Board that he was going to build no more than 350 units on this tract.

Lakeside North submitted a specific plan and they represented, they made a certain representation as to the number of units they were going to build and when the Advisory Planning Board reviewed the entire plan, which showed where the open spaces were going to be, where the park land is going to be, where the recreation areas were going to be, where the schools were going to be, it made a recommendation as to whether to accept the zoning for that particular change. Now on both of these occasions, the Advisory Planning Board was very much concerned that title to the property would change or the builder's plan would change or something would happen where there would be a change and if there was a zoning change to R-18 then the developer would build at a higher density because the zoning would permit him to do so. And in each case, each case, Mr. Bresler's case and Lakeside North, both of them offered in the first instance, when the Advisory Planning Board made the statement that they were inclined to recommend against it because of this rezone that I just mentioned to you, Mr. Bresler was the one who volunteered putting the covenants.

[632] Q. All right, now, Mr. Bernstein, just one more question.

When Mr. Garvin built or started building the garden apartments instead of town houses, which we have discussed, did you ask the City Council to file suit against him to enjoin him from a breach of the agreement which he had made with the City when the City approved his zoning? A. I did not. I would like to explain why, but I did not.

My explanation why —

Q. Yes, sir. A. We inquired into it and we were told by the City Manager, who said that the City Solicitor said that you could not bring any legal action against it. Now those covenants were put on at a time when I was not a member of the Council. I was a member of the Advisory Planning Board at that time, and I was told that the covenants provided that it would be developed in that density of twelve units per acre unless the R-30 zoning ordinance was adopted. If the R-30 zoning ordinance was adopted, then the developer was free to develop in accordance with the R-30 zoning and he did, he did — he did not originally file an application for R-18 as he had asked for but filed an application for R-30 and so he was permitted to zone with what he got and what the City agreed to allow him to do.

* * *

[671] MARY LOUISE MILLER WILLIAMSON

was called as a witness by and on behalf of the defendant, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

* * *

[673] Q. What jobs have you held with the newspaper? A. I have been a copy reader, to read the stories that come in on Tuesday nights, I have done the proof reading of the newspaper on Wednesday nights. I have done the makeup of the newspaper on

Wednesday night, I have done what we call page proofing at the Printer on Thursday morning and I have been editor perhaps about a year and a half, two different times.

Q. When did you first become editor? A. 1964 during the summer and up until the birth of my second child in December and I resigned then and Mrs. Sucher took over and she resigned at the birth of her next child and I resumed in January of 1966.

Q. What are your duties generally as the editor? A. To be present Tuesday night to be more or less in charge of seeing that all the things that are to go into the paper that week are done and accomplished, to read through all the stories, all of the items that might be in the paper, to make decisions as to what is to go in probably [674] to read the mail during the week and there is quite an enormous amount, to sort out what is pertinent to Greenbelt, because we never use — we don't use fillers, we don't use anything that does not pertain to Greenbelt, to sort of be a front office during the week because there is no office during the day, the newspaper office is only open Tuesday night for two or three hours, so my home telephone is the front office of the newspaper.

Q. Approximately how many hours a week did it take to perform your duties as editor? A. Well, that varies greatly from week to week, but we spend three to four hours at least Tuesday night, probably three or four hours Wednesday night, you don't necessarily do both jobs, but I did, an hour or two Thursday morning and probably at least three or four hours during the week would be a minimum.

Q. How much are you paid for this? A. I am paid $10 for the job of editor. I am paid $5 for the job of makeup, however out of that I must pay the one or two people, usually two people, that help, so I probably wouldn't get more than $3 for makeup, and $4 for the page proofing, because that involves my own transportation to and from Hyattsville to the printer and I am expected to be there whether it is snowing or not.

Q. Now I show you Plaintiff's Exhibit No. 1 and I [675] direct your attention to the article marked "School Site Stirs Up Council Rezoning Deal Offer Debated."

Do you recall reading that article at the time it was published? A. It would be hard for me to say I recall it. I know I was there, I must have read it.

Q. Did you write that article? A. No, I did not.

Q. Did you attend that public meeting? A. No, I did not.

Q. I now show you Plaintiff's Exhibit No. 2 and direct your attention to an article entitled "Council Rejects By 4-1 High School Site Deal" and ask you if you have seen that article before? A. Yes.

Q. Did you write that article? A. Yes, I did.

Q. Did you attend the public meeting being reported? A. Yes, I did.

Q. Is that article a fair and accurate report of what was stated at that meeting? A. Yes, it is.

Q. Now directing your attention to Plaintiff's Exhibit No. 2, I direct your attention to page 3, specifically to the reference to Mr. Albert Herling. Do you know Mr. Herling? [676] A. To speak to, yes.

Q. Do you know what he does? A. No, other than that he works for I think a baker's union.

Q. Do you have any reason to believe that Mr. Herling is an irresponsible individual? A. No.

Q. Do you consider Mr. Herling to be an idiot? A. No, sir.

Q. Now was there any understanding, discussion or agreement between you and Mr. Herling, regarding your reporting of his comments? A. No, I didn't even speak to him.

Q. Did you receive any direction of the reporting of Mr. Herling's comments from Mr. Skolnik? A. No, I never do.

Q. Do you see the word in that article referring to blackmail? A. Yes.

Q. Was that statement made by Mr. Herling at the meeting? A. Yes.

Q. Whose idea was it to report that statement in

the article? A. Mine. Those are my words.

[677] Q. Directing your attention, Mrs. Williamson, to Plaintiff's Exhibit No. 1, and I direct your attention specifically to the statement:

"'It seems like this is a slight case of blackmail,' commented Mrs. Marjorie Bergemann."

Did you, at that time, know whom Mrs. Marjorie Bergemann was? A. I am not sure whether I knew her at that time. I do now.

Q. What does she do now? What do you know about her? A. She is the wife of one of the local doctors in Greenbelt. She has been on — she has been involved in civic activities, I believe she has been on some committees.

Q. Did you regard Mrs. Bergemann as irresponsible? A. No.

Q. Did you regard Mrs. Bergemann as an idiot? A. No.

Q. Was there any discussion, understanding or agreement between you and Mrs. Bergemann regarding her comments, the publication of her comments? A. I wasn't at that meeting.

Q. Did you have any discussion with her otherwise? [678] A. No.

Q. What about Mrs. Rosetti? Did you know Mrs. Rosetti? A. No, I don't.

Q. Did you know Mr. Gough? A. Yes.

Q. Now what did you know about Mr. Gough? A. He is the head of the social studies department at High Point High School, has been a member of the City Council, was the legislative assistant to State Senator Meyer Emanuel last year.

Q. Is Mr. Gough a personal friend of yours? A. I know him to speak to.

Q. Was there ever any discussion, understanding or agreement between you and Mr. Gough regarding the publication of his comments in the newspaper? A. No.

Q. Do you consider Mr. Gough to be irresponsible? A. No.

Q. Do you consider him to be an idiot? A. No.

Q. Now Mrs. Williamson, I direct your attention — do you consider Mr. Skolnik to be a friend? A. Yes.

Q. Did you have any discussion, understanding or [679] agreement with him regarding reporting about the plaintiff? A. No.

Q. Do you consider Mrs. Skolnik to be a friend? A. Yes.

Q. I will ask the same question of her. Did you ever have any discussions, understanding or agreement regarding reporting about the plaintiff or to get plaintiff; did you ever have any understanding like that? A. No.

Q. We asked about Mr. Gough, Mrs. Rosetti, you don't know Mrs. Rosetti? A. No.

* * *

[680] Q. Do you feel any resentment that Mr. Bresler is developing property that was once owned by G.H.I.? A. No.

[681] Q. Do you know Mr. Bresler personally? A. No, I do not.

Q. Did you, at the time these articles were written, have any personal ill will toward him? A. No, sir.

* * *

CROSS EXAMINATION

BY MR. CHASANOW:

* * *

[682] Q. Have you had any experience in journalism? A. No, I have not.

Q. Have you attempted to study journalism? A. Not other than through what I have learned through working on the newspaper itself.

Q. Have you attempted to familiarize yourself with duties and obligations of a good journalist? A. As I say, not other than just what I have learned on the jobs.

Q. So you have had no prior education or experience in journalism. What you know was what was taught at the News Review? A. No, I have not. That is right.

Q. Did they ever teach you to get both sides of the story? A. We certainly do that as far as we have facility to do it. We report on a Council meeting, we check the next day if there are things that we did not understand.

Q. Well, when you say facilities, did you call Mr. Bresler and ask whether he had been guilty of blackmail when you heard him accused of it by Mr. Herling? A. I am not sure what you are referring to.

[683] Q. Well, you wrote this article — A. Yes.

Q. With the quote "Fight Bresler Blackmail". A. That is right.

Q. I notice that you put the word "blackmail" in quotes but not the complete phrase. Why was the word "blackmail" put in quotes? A. I had selected — let's see, I paraphrased his sentence but I selected out the word "blackmail" was his word and I wanted to denote it was his word I was picking up and yet his phrase I could not work into my sentence and so I could not quote more than just one word.

Q. So you didn't attempt to quote exactly what he had said. In other words, the phrase "Fight Bresler's Blackmail" was not Mr. Herling's phrase? A. He used the word "fight" and he used the word "blackmail" but I rearranged the order in which the words came.

Q. You wrote it then? A. I paraphrased it.

Q. And you put the quotes around the word "blackmail"? A. Yes.

Q. You said here also "Albert Herling suggested skulduggery". A. I did not use that word. This is a good example of [684] what happens on Tuesday night when the other members of the Editorial Board will read through an article. Apparently it was an effort to shorten. This was quite a long article and this is somebody else's phrase. That I do recall.

Q. So the article you wrote and has your by-line on there — A. Right.

Q. — uses a word you didn't write in the article, that is "skulduggery"? A. That often happens; yes.

* * *

Q. So you don't know who put the word "skulduggery" in? A. I don't recall that.

Q. But it definitely was not your word? A. That is correct.

* * *

[685] Q. Are you a member of CFPG? A. Yes, I am.

Q. Did you contribute to the legal fund which was set up to file suit against Mr. Bresler? A. I contributed to the legal fund. I have since been told, I really don't recall whether or not I did. I contributed to the legal fund. I did not at the time know for what purpose this money might be used.

* * *

Q. Do you recall how much you contributed? A. I have been told I contributed $5. I don't recall.

[686] Q. Who told you you contributed $5? A. I couldn't tell you that. I don't remember. I think it was one of the lawyers.

Q. Was it Mr. Skolnik after he filed this affidavit? A. I don't recall.

* * *

[687] Q. What was told to you when you asked to contribute your $5 to this fund? What was it to be used for? A. This was to be used in anyway that the committee saw fit in an effort to preserve the Master Plan of Greenbelt and —

* * *

Q. Do you recall that there were three articles and an editorial in the News Review which spoke about a legal fund to assist the interested citizens and legal actions to [688] enforce land use? A. Right. I haven't read these recently. That is the reason I couldn't get what you were talking about. Yes.

Q. The articles and editorials. Did you know whether those funds were to be used for any other purpose? A. No, I wouldn't have had any cause to know.

Q. Did you know that the funds were to be used to sue Mr. Bresler to recover damages by individual citizens for an amount in excess of a million dollars? A. No, I didn't know.

Q. No one told you this?

Did anyone tell you that the funds were to be used not only to enforce land use but also join me in the same suit with a claim for damages in excess for a million dollars? A. I knew that you were involved. I didn't know the amount, and perhaps knew this later. I am not sure of the sequence.

Q. Did you know at the time you contributed or asked to contribute? A. No.

Q. What the purpose of this fund was? A. Not in detail, no. Not who would be involved.

* * *

[689] Q. And did you know Mrs. Skolnik was soliciting for these funds? A. She was on the Steering Committee, so I would assume she would be.

Q. That article that you wrote, was that supposed to be a complete report of what was said at that meeting? A. It was certainly a — an extensive report of the things that were said, was to be a sampling of that was said.

I couldn't tell you what it might have left out.

Q. How long did that meeting last? A. I don't recall.

Q. Approximately? A. I really have no idea. It says in here that citizens spoke for an hour before Council took action, so I would assume it was not necessarily a late meeting.

Q. Was it a heated discussion? A. Extremely.

[690] Q. And was Mr. Herling pretty heated at the time? A. Yes.

Q. Was there anything that was discussed about Mr. Bresler's proposal or anything which transpired at the meeting which justified the use of the word "blackmail"? A. The word "blackmail" had been quoted from the week before. There was no reason not to use the word, it was the word which this person used at that time. The facts of the case, the situation there. I saw no reason at that time not to use the word.

Q. You mean you felt because it had been published the week before it was all right to republish

the word "blackmail"? A. I saw no reason not to.

Q. Do you know that "blackmail" is a crime? A. Yes, I do now.

Q. Do you know — do you know whether Mr. Bresler did in fact commit the crime of blackmail? A. My understanding of the crime of blackmail, it has no relationship to what was going on here.

Q. Well, if it had no relationship, why did you put the word in the article? A. I was using a word that was used frequently, was quoted from the meeting before and was used frequently. It was used in a common sense. You do this for me — let's see, [691] I will do this for you only if you do this for me.

Q. Well, don't you sometimes say this to your husband, if you do something for me I will do something for you? A. Yes.

Q. Is that the crime of blackmail in your eyes? A. That is not the crime of blackmail. That is not the crime of blackmail.

Q. What I am asking you is is there anything in the discussion, anything which Mr. Bresler can ask for, which justified the use of the word "blackmail"? A. There is no connection as far as I can see between what Mr. Bresler, what the situation — the offer, there is no relation between that and a crime of blackmail. There is a difference.

* * *

[692] REDIRECT EXAMINATION

BY MR. CLARK:

Q. Mrs. Williamson, when did you join CFPG? A. I don't recall exactly, but it would have been during the membership drive, which must be the spring of 1966 I guess.

Q. Were you a member of CFPG at the time you wrote Defendant's Exhibit No. 2? A. I really couldn't remember that, whether or not I had actually joined.

Q. Would you look at Defendant's Exhibit 2? You testified that you tried to tell both sides of the story. Did you tell both sides of the story with respect to the word "blackmail" in this story? A.

Yes, I quoted the only person who did take the floor and speak, one of the Councilmen got up and asked, [693] "Does anyone wish to speak in support of Mr. Bresler's proposal?" And there was one person who stood up and, as far as I recall, I quoted and gave everything that he said. I wanted to be sure to give him all that he said.

Q. Would you read what you reported? A. "Only James Martin took the floor. He suggested Bresler's action was not 'blackmail' but the legitimate advance of his rights to develop his land. Martin suggested, by way of example, that G.H.I.'s long-range planning committee had been doing much the same thing some months ago. He alleged that the density of the 'frame homes (G.H.I.) is far more atrocious than anything Bresler's considering'. G.H.I. boardmember Nat Shinderman firmly denied any similiarity in method, pointing out G.H.I.'s efforts to develop this land are in accordance with the Master Plan. Furthermore the present density of G.H.I. homes (6-1/2 units per acre) is less than half that of Bresler's plan (14 units per acre)."

Q. Did anybody contact you as the editor of the News Review and express to you the fact that they thought the article charged Mr. Bresler with the crime of blackmail? A. No, I wasn't editor at this time.

Q. Have you talked to one person that expressed to [694] you his understanding of the article that charged Mr. Bresler with the crime of blackmail? No? A. No.

* * *

[695] DOROTHY SUCHER

called as a witness by and on behalf of the defendants, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

* * *

[697] Q. Are you a member of the staff of the Greenbelt News Review? A. Yes.

Q. Approximately when did you join the staff of the Greenbelt News Review, if you recall? A. 1960. By the way, I don't have a very good [698] memory for dates. I made some notes about dates. Can I refer to those?

Q. You can if we get to the point where that becomes an issue you can refer to them. We will just take general recollection at this point.

Can you describe just briefly how you came to work for the Greenbelt News Review? A. Yes. I had lived in Greenbelt about two years and my son was about two or three years and I had a neighbor who lived three doors down from me and we became friendly because we had children of the same age and they played together. He worked on the newspaper, he was the editor at the time, as I recall, and he suggested that I come down and I didn't require much urging, because I always liked to write and I had some time so I did.

Q. Now what jobs did you perform on the News Review? A. At that time or all together?

Q. Just take it through as you recall what job you performed in general. A. I am sorry, when I first joined?

Q. Yes, when you first joined. A. Well, when I first came down I was broken in gradually. The first thing I learned to do was to write headlines and Virginia Beauchamp, whom I think was Associate Editor then, she taught me headline writing at first. She [699] would give me a very short and simple story, say a bake sale maybe for a woman's club, and she explained to me how you write a headline and I worked on it and when I finally had written the headline I would give it to her and she would look at it and if it was all right she would say so and if it wasn't she would tell me what was wrong and I would do it again until I got it right. And I did this for a while.

Q. What were your instructions you were sup-

posed to convey with a headline? A. Well, it should convey what the story is about in a very few words.

* * *

Q. What is the purpose of a sub-head? A. Mainly I would say it is just to make it easier to read, to help the eye, because that long column of type is trying to the eye. That is the reason for a sub-head.

Q. What do you try to convey with a sub-head? A. Well, the substance of what follows it immediately, right after it.

Q. Now let's move forward. Did you at any time hold any office with the News Review? A. Yes, I did.

[700] Q. What office or offices, if any? A. Well, I had been editor, I was editor for about a year and two or three months in all, I was editor at two different times. And I was Associate Editor for a while, I served on the Board as Secretary and Vice President I think.

Q. Now, what were your duties as editor, Mrs. Sucher? A. Well, a lot of things. Mainly you just — the editor does whatever has to be done. If somebody has a problem they bring it to the editor. It is — you have to have somebody who is responsible, because the problems aren't always predictable, as the advertiser has a problem, he will bring it to you, if there is a problem of circulation it comes to you, all kinds of things.

Q. Approximately how many hours a week did it take you to perform your duty as editor? A. I figured it took at least 20 hours a week.

Q. How much were you paid for that service? A. $10.

Q. Now what were your major sources of news for the News Review? A. Well, standard things are City Council and G.H.I. Board meetings. You know, every week that is the mainstay.

Q. Did you have a regular reporter to cover these two subject? A. Sometimes we did. We always tried to but since [701] we are volunteers it is a heavy chore for anybody to do it week after week, so sometimes we have somebody who would take it as a

regular beat. Then after a while he would say I can't do it anymore, get somebody else.

Q. Now the stories, the main stories in the paper generally looked at by everybody — well strike that question.

Could you describe very briefly to the jury how these stories or a story is processed through the paper and when it appears? A. Well, on a Tuesday night, that is when we work on the paper. Somebody would bring in a story and report it, say a City Council story. He would bring it in and he would put it in the "in box".

Q. When is the City Council meeting? A. That is Monday night. Then as members of the staff come in, or perhaps they get there before the reporter, somebody on the editorial staff sitting around the table would take it out of the box and start to read it and edit it, write a headline for it. And in the course of the evening — did you say a major story?

Q. Yes. A. A major story, like the City Council story, would probably be read by everybody on the Editorial Board who was there, by the editors, certainly.

* * *

[703] A. *** Yes, the Editorial Board was Al Skolnik, President; G. K. Hodenfield, Vice President; Sid Kastner, Secretary; Mary Louise Williamson, Treasurer and Mary Smith. She was a member at large.

* * *

Q. What are your other sources of news? A. Aside from G.H.I. and City Council?

Q. Yes. A. Greenbelt organizations, Greenbelt news of human interest things.

Q. What kind of organizations are these people? A. Any kind, really, any kind of really bonafide Greenbelt organization who would publicize their activities.

Q. What about letters to the editor? [704] A. We print letters to the editors.

Q. Do you have any general policy about printing letters to the editor? A. Yes, we do.

Q. What is that policy? A. Well, first of all the News Review is the only Greenbelt newspaper and so we feel that all the opinion in the town should be represented in the paper and for that reason we print just about every letter that we get except that we don't print anonymous letters, we will withhold the name if the person would ask us to, we won't print something that seems to us to be vicious or personal attack or obscene, you know, some sense beyond the pale, but we don't object to vigorous opinions.

Q. Now Mrs. Sucher, I direct your attention again to Plaintiff's Exhibit No. 1, the article entitled School Site Stirs up Council, Rezoning Deal Debated.

Did you write that article? A. Yes.

Q. Did you attend the public meeting? A. Yes, I did.

Q. What is that article a report of? A. It is a report of the special meeting of the City Council called.

Q. Is that a fair and accurate report of what took [705] place at that meeting? A. I think so.

Q. Did you receive any direction from Mr. Skolnik regarding who you would quote in that article, and who you wouldn't quote? A. No.

Q. Now I direct your attention to that article to the phrase, "It seems this is a slight case of blackmail, commented Mrs. Marjorie Bergemann on Monday night. The word was echoed by many people from the audience."

Whose idea was it to report that statement by Mrs. Bergemann? A. Mine.

Q. Did you receive any instructions from Mrs. Skolnik regarding this? A. No.

Q. Did you receive any instruction from anybody else on the News Review staff? A. Absolutely not.

Q. Now do you know who Mrs. Bergemann is? A. Yes.

Q. Is Mrs. Bergemann a close personal friend of yours? A. No.

Q. Do you consider Mrs. Bergemann to be an irresponsible person in the community? [706] A. No, I don't.

Q. Did you have any discussion, agreement or understanding with Mrs. Bergemann regarding the printing of her comments in the paper? A. No.

Q. Mrs. Sucher, did you, directing your attention to the statements:

"Speaking from the floor, Gerald Gough, commented:

'Everyone knows there's a need for a school — just walk through the halls of High Point. The developer knows there's a need and says, 'Will meet your need if you meet our need.' In my opinion, is highly unethical.'"

Did Mr. Gough say that at the meeting? A. Yes, he did.

Q. Whose idea was it to report that statement? A. Mine.

Q. Did you ever receive any instructions from Mr. Skolnik or anybody else on the News Review regarding reporting that statement? A. No.

Q. Did you know who Mr. Gough was at the time? A. Yes, I did.

Q. Who was he? A. He was a school teacher.

[707] Q. Did you consider him to be irresponsible? A. No, I didn't.

Q. Did you consider him to be an idiot? A. No, certainly not.

Q. Now I direct your attention to the article, to the second column which says:

"Among the parents whose spoke was Mrs. Joseph Rosetti, who said: 'I have several children going into high school, but I would rather adhere to the Greenbelt Master Plan than overcrowd the town with density development. I would stand for my children's discomfort, rather than give in to a blackmailing scheme.'"

Did Mrs. Rosetti make that statement at the meeting? A. Yes, she did.

Q. Whose idea was it to publish that statement in the paper? A. Mine.

Q. Did you receive any directions or instructions from Mr. Skolnik or anybody else on the News Review staff to print that? A. No.

Q. Did you know Mrs. Rosetti? A. No.

Q. Did you have any discussion or agreement or understanding [708] with her regarding the publication of her comments? A. I didn't know her at all. I didn't know who she was. I had to ask after the meeting.

Q. Was there anything — was there any reason for you to consider her to be irresponsible or an idiot? A. No, I did not.

Q. Now Mrs. Sucher, have you ever received any objection from anybody regarding, except this lawsuit now, any objection from anybody regarding that article? A. No, I never did.

Q. Do you know Mr. Bresler? A. No.

Q. Now turn to Plaintiff's Exhibit No. 2, please. A. Is this this one?

Q. That is that story.

I am not referring you to the story. A. "Council rejects by 4-1 high school site deal"?

Q. Do you recognize that story? A. Yes, I do.

Q. Did you write that story? A. No.

Q. Did you edit that story? A. Yes. I was not the only one who edited it, but I did edit it.

Q. Were you at the meeting? [709] A. Yes.

Q. I direct your attention to the statement on the second page referring to Mr. Albert Herling.

Did you attend the meeting? A. Yes.

Q. I direct your attention to page 3 of Plaintiff's Exhibit 2, the sentence:

"Albert Herling suggested skulduggery in the September court postponement."

Did you edit that statement? A. Yes, I did.

Q. Whose idea was the word skulduggery? A. It was mine.

Q. Did you consider that word to be a fair and

accurate statement, summary of what Mr. Herling said at the meeting? A. Yes, I did.

Q. Did Mr. Herling state at the meeting — did Mr. Herling use the word "blackmail" at the meeting? A. Yes.

Q. Did you know who Mr. Herling was? A. Yes.

Q. Are you a personal friend of Mr. Herling? A. He is an acquaintance.

Q. Did you have any discussion, understanding or [710] agreement with Mr. Herling at the time you wrote that article regarding the publication of his comments in the News Review? A. No.

Q. Did you receive any direction from Mr. Skolnik or any member of the News Review staff telling you to publish that statement? A. No.

Q. Now, are you a member of CFPG? A. Yes.

Q. When did you join CFPG, if you recall? A. I don't really recall. It was a couple of years ago.

Q. Did you take part in the fund drive for CFPG, the fund drive? A. I think I contributed a dollar.

* * *

[711] Q. How well did you know Mrs. Bergemann? A. Well, she was an acquaintance, friendly acquaintance I would say.

* * *

[713] Q. Have you ever published a deliberately false statement in your life? A. Never.

* * *

CROSS EXAMINATION

BY MR. CHASANOW:

* * *

[715] Q. Now you said you wrote the article that is in Plaintiff's Exhibit 1, which is the Greenbelt News Review for Thursday, October 14, 1965. A. Yes.

Q. Was that intended to be a complete quotation of everything that was said at the meeting? A. No.

[716] Q. Well, how did you decide what you were going to publish and what you were not going to publish? A. Well, I always like to take — when I take

notes I like to take down as many quotes as I can. I couldn't write fast enough to take down everything that happened at a meeting, but I listened very hard and I tried to hear statements that seemed to present feeling at the meeting, different points of view and those are the ones I quoted.

Q. And those you wrote down as being quotes? A. Well I didn't use everything that I quoted, that I took. You know, I didn't use all my notes in writing the story.

Q. Well, what did you eliminate? A. I have my notes. May I?

Q. Would you take a look at your notes?

May I first see your notes, Mrs. Sucher?

(Counsel looks at paper.)

I notice there were some items you had crossed out and others hadn't. What does that mean? Which items did you use and which ones did you not? A. As I wrote the story I tried, you know, I was trying to organize the story. I kept going through my notes and as I would use something from my notes I put a pencil mark through it so I didn't have to keep reading it over and over again. So by and large the things that don't have [717] a pencil mark through are things I didn't use in the story or conceivably I haven't looked. There might be something I haven't marked in there that was later took out because the story was too long. I, in general, I think I used about everything that was favorable to Mr. Bresler's proposal because there wasn't much of it and there was more of other that I could use.

Q. Are you saying you tried to use everything that was favorable to Mr. Bresler's proposal? A. Well, there were two points of view, pro and con. There was a lot of feeling con, against his proposal. There was not much for it so I used whatever it was.

* * *

[718] Q. How much education have you had, Mrs. Sucher? A. I have a Bachelor's Degree.

Q. Do you know the meaning of commonly used words? A. Well, some I do.

Q. Do you know that blackmail is a crime? A. Yes.

Q. Was there anything that was proposed by Mr. Bresler or which occurred at that meeting that justified the use of the word "blackmail"? A. Blackmail is a word that has more than just one meaning and it was not used in that sense by anyone at the [719] meeting; I don't think.

Q. How did you know in what sense it was used? Did the people who used it tell you in what sense they intended to use it? A. Well, the crime of blackmail — my knowledge of the crime of blackmail, I am afraid is really from mystery stories, but I think of this being extorted money by threatening to tell something you know and there was nothing like that. I mean they couldn't have meant that.

Q. Did you then, in your article, then, explain that even though the word "blackmail" was used they didn't really mean blackmail because they weren't charging Mr. Bresler with a crime or weren't charging him of extorting money by requested — A. The word "blackmail" is used in other senses, too.

Q. What other senses did you use it? A. Would I use it?

Q. Yes. A. Well, sometimes you see in the paper the phrase "nuclear blackmail," for example. That is in pretty common usage. I am talking about pretty common usage.

Q. That is talking about Russia? A. You see, used in that manner. It doesn't refer to a crime at all.

Q. What does "nuclear blackmail" mean? [720] A. As I understand it, it is threatening a country, threatened because it has atomic weapons, other countries don't dare to do certain things, but that is not, you know, you may disapprove of it, but it is not a crime punishable by law.

Q. Wouldn't threatening to use an atomic weapon constitute a pretty serious crime? A. Well, in what sense do you mean the word "crime"? You can't put somebody in jail for it.

* * *

Q. Was there anything that Mr. Bresler proposed or that was discussed at that meeting, which justified the use of the word "blackmail" with respect to Mr. Bresler? A. I really couldn't think I could say whether it was justified or not. I wasn't there to say it was justified or wasn't justified. I was there to report what happened.

* * *

[722] Q. Do you think that the word "blackmail" was fair comment on what Mr. Bresler was asking the Council to do? A. Do you mean did I feel the people who used that word were right to use it?

Q. I am not asking you about whether or not they were right. I am asking about your interpretation. Did you write the article? Did you think the words "fair comment" or — I mean the word "blackmail" was fair comment on what Mr. Bresler was proposing to the Council or asking the Council to do? A. Well, I felt that the word "blackmail" was used very angrily, the people were really mad and that word "blackmail" was used not once or twice like in my story, but over and over and over again.

Q. By who? A. By people at the meeting. And I felt if I left that out I really wouldn't be writing a truthful article.

Q. Who else used the word, to your recollection? [723] A. Well, I don't remember. You see, it was used over and over. I took down one or two quotes of people using it and then I didn't quote it anymore because, you know, why should I quote the same thing over and over again. But it was said over and over again.

* * *

Q. Mrs. Skolnik participated in the discussion, did she not? A. Yes, she made a point.

Q. Did Mr. Skolnik participate in the discussion? A. I don't remember.

Q. Do you remember whether Mrs. Skolnik also used the word "blackmail"? A. No, I don't remember.

Q. Would you say she hadn't? A. I couldn't say — I know I didn't quote her.

Q. But there were a lot of people you didn't quote — A. Saying that word and I couldn't any longer remember who used it and who didn't use it.

* * *

[724] Q. You said you had contributed to the CFPG legal fund.

Who asked you to contribute? A. As I recall it was Mrs. Bergemann. She was asking me — she lived on that street so I guess she was the collector for that street. I was working in my garden.

Q. How much did you give her? A. I think it was a dollar.

Q. What was the legal fund to be used for? A. Well, I understood it was some sort of a lawsuit which had to do with a case that could help to uphold the Greenbelt Master Plan. But I had had a baby recently and I was not — I think I was on maternity leave at the time. I wasn't paying much attention to goings on in the community.

[725] Q. Did Mrs. Bergemann tell you that she — that that dollar was going to be used to file suit against Mr. Bresler? A. I am sorry, I have to admit that she said something and I wasn't too interested and I didn't want to get into a discussion and I handed her a dollar.

Q. Is that the same Mrs. Bergemann who is quoted in that article as using the word "blackmail"? A. Yes, that is right.

Q. Did you, after you gave your dollar, check to find out what your dollar was going to be used for? A. No, I didn't.

Q. Did you know that the dollar was going to be used for a legal fund for various individuals who tried to collect damages in excess of a million dollars from Mr. Bresler and me? A. I didn't know that this was so.

Q. Would you have contributed your dollar to a legal suit for a fund against you? A. Well, you are a neighbor of mine, too.

Q. What does that mean? A. Well, I wouldn't like to see anybody collect a million dollars from you.

Q. You wouldn't like to? A. No.

Q. Didn't you read the article in the News Review, [726] three articles which Mr. Skolnik reported and an editorial encouraging people to contribute to this legal fund to file suit? A. Well, sometimes legal funds are necessary in causes of one kind or another.

Q. Was this the type of legal fund that you supported? A. I am sorry, but it was not a time when I was paying much attention to what was going on in the community.

Q. Well, were you in favor of a legal suit? A. I am in favor of the goals of CFPG and I had enough faith in the people that I knew that were active in it to feel that their judgment in these matters was reliable, but I didn't know the details about it.

* * *

[727] Q. Who inserted that word "blackmail" into that article, as a sub-head? A. I did, I think.

Q. To call attention to the fact the word "blackmail" had been used against Mr. Bresler? A. No, it was just — I just recorded it as a subhead. That was what was discussed in the paragraph that came right after it, and you know, a sub-head has to be very short, because you can't use two lines.

Q. Did you discuss it with anyone on the staff of the News Review or the Editorial Board? A. I don't remember that it was discussed.

Q. Did anyone review your article? A. Yes, it was edited by a number of people, but I don't remember any discussion.

Q. What people? A. Oh, I don't know, I couldn't say at this late date. The people who are at the meeting and there were some, they certainly looked at it. I think everybody did because everybody was interested in what had happened at the meeting. That is my impression but it is too long ago.

Q. When you say people at the meeting, you mean Mrs. Skolnik certainly because she was at the meeting? [728] A. Yes.

Q. And if Mr. Skolnik was at the meeting, he would have reviewed it? A. As I say, it was a hot meeting, I think everybody read it.

* * *

REDIRECT EXAMINATION

BY MR. CLARK:

* * *

Q. Now do you know if Mr. Champion or Mr. Pilski was a member of G.H.I. at this time? A. I think Mr. Champion was.

* * *

[730] ELAINE SKOLNIK

was called as a witness by and on behalf of the defendants, and, having been first duly sworn, was examined, and testified as follows:

DIRECT EXAMINATION

BY MR. CLARK:

* * *

[731] Q. Are you a member of the news staff of the News Review? A. Yes, I am.

Q. How did you become a member of the staff of the [732] News Review? A. How did I become — well I lived in 45 Court at that time, when we first moved there and some of our neighbors were on the staff and I became very interested in getting onto the paper and performing news service. I wrote "Our Neighbors" column when I first went on the paper. This was a social column.

Q. How long ago was that? A. Nearly 13 years ago.

Q. Mrs. Skolnik, what other duties, if any, have you performed for the Greenbelt News Review? A. I have written stories on education and written — was also interested in writing stories on recreation. I have occasionally covered a City Council meeting and occasionally covered Board of Education meetings. Also meetings — also I have written human interest stories and I still write the "Our Neighbors" column, which is a social column, birthdays, and —

* * *

[733] Q. Have you held any title position on the News Review? A. No.

Q. Now during this period have you been a member of G.H.I.? A. Yes, we are a member of G.H.I. We bought our house and you are automatically a member of G.H.I. when you buy a G.H.I. house.

Q. Now do you ever take any time to — do you ever review articles that are going to be going into the News Review? A. No, I don't do any editing.

[734] Q. Do you generally read the articles, any articles, before they are published? A. I sometimes dip my hands in the box, you know, just look them over because I am curious.

* * *

Q. Now Mrs. Skolnik, I want to direct your attention to Plaintiff's Exhibit No. 1, the article in the paper entitled "School Site Stirs Up Council, Rezoning Deal Offer Debated".

What does that article report about? A. This article was a report of the City Council meeting in which the developer's proposals was discussed, a proposal on school site matter.

Q. Have you read that article before coming here today? A. Yes, I have looked it over.

Q. Were you at that meeting? A. Yes, I was at that meeting.

Q. Is it a fair and accurate report of what was said [735] at that meeting? A. Yes, it is.

Q. Now Mrs. Skolnik, I direct your attention specifically to — well strike that.

Mrs. Skolnik, do you have any recollection as to whether you read that article prior to publication? A. I believe I scanned it.

Q. Now Mrs. Skolnik, I direct your attention to the phrase that says, "'It seems that this is a slight case of blackmail' commented Mrs. Marjorie Bergemann on Monday night and the word was echoed by many speakers from the audience."

Did Mrs. Bergemann say that? A. Mrs. Bergemann spoke and this is what she said.

Q. Do you know who Mrs. Bergemann is? A. Yes, I do.

Q. Is Mrs. Bergemann a personal friend of yours? A. Mrs. Bergemann is a friend of mine.

* * *

[736] Q. Did you have any discussion with Mrs. Bergemann at this time? A. No, not that I remember.

[737] Q. Mrs. Skolnik, I refer you to the statement in the article:

"Speaking from the floor, Joe Gough, commented: 'Everyone knows there's a need for a school — just walk through the halls of High Point. The developer knows there's a need and says, 'Will meet your need if you meet our need.' In my opinion, it is highly unethical.'"

Do you know who Mr. Gough is? A. Yes.

Q. Is Mr. Gough at this time a close personal friend of yours? A. No.

* * *

Q. Mrs. Skolnik, do you have any opinion regarding the responsibility of Mr. Gough? A. Well, Mr. Gough is a — is the head of the Social Studies Department over at High Point. He is a teacher. He [738] is very highly regarded in school.

Q. Did you have any understanding or discussion with Mr. Gough regarding this article? A. No.

Q. I direct your attention to the statement:

"Among the parents who spoke was Mrs. Joseph Rosetti, who said: 'I have several children going into high school, but I would rather adhere to the Greenbelt Master Plan than overcrowd the town with dense development. I would stand for my children's discomfort, rather than give in to a blackmailing scheme.'"

Did you know Mrs. Rosetti at this time? A. I didn't know her, I saw her at meetings but I didn't know her.

Q. Did you have any discussions with her regarding her comments or this article? A. No.

Q. Did you make — did you give any directions to the writer of this article? A. No, no.

Q. Now I direct your attention to Plaintiff's Exhibit No. 2, the article entitled "Council Rejects by 4-1 High School Site Deal".

Have you seen that article before? [739] A. Yes.

Q. Did you have a recollection as to whether or not you read that article prior to publication? A. I am not sure, but I might have looked at it.

Q. Did you attend the public meeting being reported? A. Yes.

Q. Does that article constitute a fair and accurate summary of what took place to the best of your recollection? A. To the best of my recollection; yes.

Q. I direct your attention to the paragraph on page 2, one where Albert Herling suggested skulduggery in the September school postponement and goes on to quote Mr. Herling as making a statement regarding blackmail.

Mrs. Skolnik, did you, at that time, know who Mr. Herling was? A. Yes, I did.

Q. Was Mr. Herling a personal friend? A. I knew Mr. Herling well, I had been in a course that he had directed and Mr. Herling I knew at one time. Of course — I wouldn't think it is a personal friend.

Q. Mrs. Skolnik, did you have any discussions with Mr. Herling regarding this article, publication of this article prior to the publication? A. No.

Q. Did you issue any directions to anybody regarding [740] the inclusion of his comments in this article? A. No.

* * *

[742] Q. I direct your attention to Plaintiff's Exhibit No. 6 entitled "Charles Bresler to Run For State Comptroller".

Did you have anything to do with the preparation of that article? A. I wrote a paragraph, that is right.

Q. What paragraph? A. "Reportedly, a number of homeowners, both in the Lakecrest and Boxwood

developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with County standards."

Q. What information, if any, did you base that article about? A. Well, the statement was based mainly on conversations I had with a contingent of Boxwood homeowners that had come to a meeting of Citizens For A Planned Greenbelt. This was June 7, 1966. They wanted to air their complaints about construction defects in their home. And I remember very well that following the meeting a group of the homeowners, and I was among them, were sitting in front of the Council chambers and they were speaking of their difficulties and those of some of the people who were not present and they spoke of going to lawyers or else of complaints to the County [743] Inspector and other administrative agencies. This wasn't really the — this statement is also based on the fact that prior to this meeting I was aware that there had been difficulties in the Boxwood homes as far as their construction problems and similarly in the Lakecrest development. Several homeowners in the Lakecrest development also had seen lawyers. In fact, they were the group who had written to the — to county officials.

MR. CHASANOW: If Your Honor please —

THE WITNESS: This is what the —

MR. CHASANOW: The witness is not being responsive. I ask that her testimony be stricken unless she responds directly to the question.

BY MR. CLARK:

Q. Mrs. Skolnik —

THE COURT: The Court will sustain the objection and that portion of the testimony which refers to what somebody else told her will be stricken.

Now the question of the Court is what reason you have for doing this?

MR. CLARK: The question was what information upon which you base the article.

THE COURT: Right, but she is quoting other people and what they said to her.

MR. CLARK: That is the basis of her article, Your [744] Honor.

THE COURT: She can say upon complaints of other people but she can't say what the complaints were.

And what they said. This is my understanding of what she is saying now.

MR. CLARK: I would submit, Your Honor, that that testimony is relevant to this proceeding.

THE COURT: I think the testimony is relevant but she can't testify to what somebody else said to her, what the people were doing. Now if she knows these were complaints. She testified she understood there were many complaints in the Boxwood Village, that is fine, but when you go in saying what those complaints are without actual knowledge they existed, the Court will sustain that objection.

Of course they are not within knowledge. They are not within knowledge of the witness.

MR. CLARK: This evidence is.

This evidence is not being offered, Your Honor, to prove there were complaints. This testimony is being offered to prove the statements were in fact made and the witness relied on the statements and the witness published the article in reliance on the statements.

THE COURT: She was permitted to go that far with the testimony. She is going beyond that, Mr. Clark.

MR. CLARK: Thank you, Your Honor.

[745] THE COURT: She did answer the question consistent with that until she got beyond that category and Mr. Chasanow objected.

BY MR. CLARK:

Q. Did you know any of the people that talked to you? A. At the meeting of June the 7?

Q. Yes. A. Yes, I knew some of them. Some I had met that evening and there are those I had seen at Council meetings, you know.

Q. Did you know any of the other people who had contacted you prior to this time? A. Yes.

Q. Did you know they were residents of Greenbelt? A. Yes.

Q. In the statements that were made to you by these homeowners, was the name of a builder identified? A. Yes.

Q. What was that name? A. Bresler.

* * *

[746] Q. Do you have any — did you have any reason at that time to doubt the truthfulness of the statements that were made to you? A. No, I did not.

Q. Did you call Mr. Bresler to verify that? A. No.

Q. Now Mrs. Skolnik, do you know Mr. Charles Schwan? A. Yes.

Q. Do you consider him a friend? A. Yes.

Q. At the time of the publication, did you have any discussion with Mr. Schwan regarding reporting of the facts about the plaintiff? A. Which publication?

Q. The one that is right in front of you. A. Oh, the one — Exhibit 6?

[747] Q. Right. A. No.

Q. Now Mrs. Skolnik, do you know Mr. Bresler personally? A. No.

Q. How many times have you talked to him? A. Oh, I have talked to him on — I can't tell you how many, but I have talked to Mr. Bresler.

* * *

[748] CROSS EXAMINATION

BY MR. CHASANOW:

Q. Mrs. Skolnik, I think your last answer was that you have never deliberately told a lie; correct? Or is that an exception to what you just said? A. I have never written anything that I knew is false; yes. You are talking about the newspaper article.

Q. Have you ever written anything that turned out to be false, that you hadn't known at the time was false? A. In "Our Neighbors", for example, sometimes I will get the name of a person wrong and I will correct it when I am notified of it.

Q. Well, apart from "Our Neighbors" column, how about the "Our Mr. Bresler" column?

Have you ever printed anything that you found out

afterwards was wrong? [749] A. If something was — nothing was ever called to my attention.

Q. If it were not called to your attention but you found out of your own knowledge later that what you had said was untrue, would you publish a correction? A. Yes.

Q. Do you investigate statements that may be damaging to anyone? A. I am sorry, will you state that again? Will you start again?

Q. If you investigate assertions that may be damagaing to someone before you publish these assertions? A. I don't understand your question.

Q. Well, specifically, the column that you said you wrote part of. A. Yes.

Q. The part being that reportedly a number of homeowners have started legal proceedings against Mr. Bresler. Now did you check to find out if, where these legal proceedings had been filed? A. When they said legal proceedings, they said that they had been to see lawyers. I didn't question that. Because there was a whole group of people there and they were telling their stories and they said they had been — said they had seen lawyers and I had no reason to question them.

[750] Q. How much education have you had? A. I have three and a half years of college.

Q. Fine. What does "started legal proceedings" mean to you? A. It means to me that they went to a lawyer.

Q. You mean just — A. With their problems. That is right. They had problems in their homes and they went to see a lawyer.

Q. Well, you had problems. Did you talk to a — had you talked to Mr. Clark about it?

Do you interpret this to mean you started legal proceedings? A. In the context of the conversation at the time of the meeting, when I used "started legal proceedings" that they spoke to lawyers or saw lawyers and were trying to get their problems straightened out, yes.

Q. What do — forgetting about the word "started", what do legal proceedings mean to you? Would you say a court trial is a legal proceeding? A. Yes, it could be.

Q. Would you say the filing of a suit is a legal proceeding? A. Yes.

Q. Would you call it a legal proceeding before a suit is filed or it goes to court? [751] A. Well, yes, I think when you go to a lawyer it is a proceeding you are seeing a lawyer.

Q. You say merely advice it is what you call "started legal proceedings"? A. Yes, because they wanted to — they had these defects in their homes and they wanted to get them straightened out and they went to a lawyer to start action, whatever that may be, and that to me is a legal proceeding.

Q. Why didn't you say in that paragraph that they have consulted lawyers, why did you say started legal proceedings? A. Well, that is the way I wrote it.

Q. Isn't it the intent of the newspaper to write as clearly and concisely as possible? Is this the purpose of your writing for the newspaper? A. Yes.

Q. Isn't it the obligation of a newspaper to present a clear picture, in clear words of exactly what you are trying to tell the reader? A. Yes, this is — was my understanding of the term "legal proceedings".

Q. Didn't it occur to you, by saying a number of homeowners had started legal proceedings against Mr. Bresler, in fact was intended to convey the thought that they had actually gone to court against Mr. Bresler, had filed lawsuits? [752] A. No.

Q. That isn't what you intended? A. It could have meant suit alone, but it meant seeing a lawyer and whatever action would come out. I mean there was nothing specific. To me that was very general.

* * *

Q. Let me refer you to page 5 of your husband's answers to interrogatories. And I read the paragraph at the bottom of page 5. It says "Elaine Skolnik also

reported upon and/or attended a number of meetings of the City Council and a few meetings of G.H.I. and of the County Board of Education. At these public meetings, Mrs. Skolnik occasionally spoke on the subjects under discussion which included activities of plaintiff."

Now what activities of the plaintiff did you speak about [753] to the County Board of Education and G.H.I. and the City Council? A. I was very interested in the — well there was the covenant suit that I occasionally, covenant matter that I could have occasionally spoken on. I can't recall what I said over the period of two years. You are asking me for something specific. I can't. But I was very interested in seeing that the Greenbelt Master Plan be developed and it is possible that when the covenant matter came up I could have expressed my opinion that I had on the matter. But I can't remember exactly what I said.

Q. You used the phrase activities of the plaintiff. Now what activities of the plaintiff did you speak about at the City Council meeting of G.H.I. and the County Board of Education? A. Well, the Board of Education, there was the matter of school site in which there were the Greenbelt City Council and most of the majority, members of the community —

Q. I am not talking — A. I can't recall anything specific.

Q. When you say plaintiff, activities of the plaintiff, you are talking about him as a personality, apart from the matters relating to — A. Plaintiff as a developer, in Greenbelt.

Q. Well, can you recall what you said? Your husband [754] apparently got that from you or else heard you say these things. A. Well, if I reported the meeting I might ask questions regarding the status of the different matters in which the developer was being discussed at the City Council meeting on the agenda.

Q. Do you recall any specific activities of the plaintiff that you did discuss? A. I can't recall right now.

Q. So you don't know why your husband mentioned these activities of plaintiff? A. He was referring no doubt to the times that I probably did get up and say something.

* * *

[755] THE WITNESS: These were activities of the developer, the plaintiff in Greenbelt, the covenants and there was the school site proposal. There was the — also the high rise apartment. All these things were discussed regularly at City Council meetings. So these were activities.

BY MR. CHASANOW:

Q. Now what did you have to say about them? A. What did I have to say about them?

Q. Yes. A. I can't remember any specific utterance at meetings I mean you are asking me as to what I remember exactly, what I said exactly. I couldn't tell you exactly, but I could tell you I favor very much that the school site be on Parcel 15 site and that I was anxious to see that it might be placed there and I have spoken on that matter.

* * *

[757] Q. Have you urged any litigation against Mr. Bresler? A. No.

Q. Not at all?

Weren't you a member of the Steering Committee of CFPG? A. Yes, I am.

Q. And Mr. Charles Schwan, the President of G.H.I., which filed the School Board suit, is also a member of the Steering Committee; correct? A. Yes, as are 1800 people.

Q. But there are 20 of you? A. Twenty or twenty-one from different parts of the town.

Q. Wasn't it CFPG through its Steering Committee, which solicited through the News Review, a legal fund for the filing of the suits against Mr. Bresler? A. The Citizens for a Planned Greenbelt is an organization that supports the Greenbelt Master Plan. And one of its goals is to support any legal action wherever the Master Plan may be damaged or jeopardized.

Q. Did you, as one of the members or member of the Steering Committee of CFPG do anything to en-

courage or solicit funds for — A. I voted to establish, to have, to endorse the citizens who —

[758] Q. That is all you did, voted to endorse? A. To endorse the citizens, which was a suit to enjoin the building of the high rise apartment and to enforce the covenants.

Q. And that is all it was for? A. This was what — this was what the CFPG was interested in, was interested in the Master Plan, that Greenbelt be developed in accordance with the Master Plan.

Q. And you endorsed this? A. The Master Plan; yes.

Q. No, endorsed the action of CFPG? A. Yes.

Q. You did nothing further? A. I did not solicit. My phone number was probably in the paper to — as far as volunteers.

Q. Just a moment. How did you know your phone number was in the paper? Did you discuss your husband's testimony with relation to the phone numbers? A. No, my phone number is always in the paper.

Q. I am asking you a question. Did you discuss with anyone who was present in this Court when the matter of phone numbers came up? A. No.

Q. How did you know I was going to ask you about the phone number? [759] A. I didn't know you were going to ask it. I didn't know at all.

Q. What made you suddenly bring up phone numbers? A. Because I have, in the last two or three weeks, I have been reading over the papers and, for own benefit, and I have — my phone number always appears in the paper. It appears under "Our Neighbors". It appears whenever — for most part, whenever CFPG —

Q. Mrs. Skolnik. A. Yes, sir.

Q. Did you discuss what you had discovered in the paper with relation to phone numbers with your husband before he testified? A. No, I didn't discuss it.

Q. You never had a discussion, you never talked about this case, or what you found or what he found? A. Before the —

Q. Before the trial. Didn't you have any conversation about the testimony, of which he testified? A. Oh, we talked about the case all the time, sure.

Q. And when you found that your phone number was in it, did you mention this to your husband? A. No, of course not. I didn't.

Q. And there has been no discussion, since the trial started or since your husband testified, between you and your [760] husband concerning phone numbers? A. That is right.

Q. Have you discussed any aspect of the case with your husband since he testified last week? A. We have discussed in general the case but nothing as far as testimony is concerned.

Q. What do you mean in general? What did you discuss about the case? A. Well, coming to Court and just the case in itself as far as — nothing though that has happened in Court.

Q. Didn't your husband tell you that he was surprised to learn that the articles which advertised for CFPG, the solicitation of funds for this legal drive, the suit to be filed against Mr. Bresler, which was published in three editions of the newspaper, and which contained the phone number, that this is the first time he had known your phone number was in the newspaper? A. It is very possible. It is very possible he wouldn't recall.

Q. You are aware the three articles did list 474-6060? A. I don't know how many articles did. Usually when CFPG, when there is a call for volunteers, my phone number is usually mentioned.

Q. But this was in connection with legal funds for the filing of suit against Mr. Bresler. You are aware of [761] this, aren't you? A. Yes, I was aware of the suit.

Q. Who authorized use of your phone number for the collection of legal fund? A. This was not for the collection of legal funds. This was for volunteers. I did not collect any funds. I was not a solicitor.

Q. Well, when you say you were not a solicitor,

what reason was there for presenting your — A. To get volunteers.

Q. Volunteers to do what? A. To go out and solicit.

Q. So you didn't go from door to door, but you got the people who did go from door to door. A. If someone called me, if they were calling me, yes, that was the purpose of —

Q. Well, what about if they call your husband while you were out at the meetings? Didn't you tell your husband there may be calls coming in? A. No.

Q. You never left word what to do if any calls came in? A. No.

Q. Did he ever tell you that any calls came in? A. He would tell me if calls came in for me. I get [762] lots of calls.

Q. Fine. Any calls that came in on the newspaper — A. I get lots of calls on the newspaper.

Q. I am talking specifically about the legal fund drive. A. I imagine if I received a call he would tell me.

Q. And did you think this was a worthwhile thing, the collection of legal funds for filing suit against Mr. Bresler? A. I think it was worthwhile for CFPG to do what it could to see that the Greenbelt was developed according to the Greenbelt Master Plan; yes.

Q. That is as far as it goes, then? A. That is right.

Q. Is that your complete statement? A. I think that is.

Q. What were the legal funds to be used for specifically? A. The legal funds would be used at any time the committee felt that it could help in Greenbelt's, in the goal of the Greenbelt City Council, the goal of the Citizens For A Planned Greenbelt and for all — the Citizens For A Planned Greenbelt is composed of all the people from all parts of the town, citizens groups, from Boxwood, from Lakewood, from Lakecrest, G.H.I., and this was in the public interest.

[763] Q. Is it in the public interest to file lawsuits, Mrs. Skolnik? A. This was for land use, to

see that the land was developed according to — and it didn't — whoever the developer might be or whoever it was trying to jeopardize the plan. It was a good use.

Q. Did you, as a member of the Steering Committee — A. Yes.

Q. — determine what the suit was which was filed, who filed it, what the nature of the suit was? A. No, as long as it conformed with the objectives of the Citizens For A Planned Greenbelt.

Q. How would you know whether it conformed with the objectives or not if you didn't check the suit to see what it was? A. We were assured that it was being filed or instituted with those objectives and there was probably — there were a few people who were — — I really didn't have that — I voted for it and when the reports came back to the committee I listened carefully and I was satisfied.

Q. You were a member of the Steering Committee which is in effect the executive body of this organization; is that correct? A. That is correct.

Q. Who was it that assured you that the objectives of CFPG were being carried out in the suit? [764] A. The committee itself discussed these matters at length. They brought — there was the City Council came to the CFPG, we learned that it would be advantageous to pursue this.

Q. The City Council told you to file this suit? A. No, I say we wanted to learn all about what was involved.

Q. But you said somebody assured you that the suits fulfilled the objective. Who? A. I think the committee was assured by the people who were reporting on this.

Q. Who were these people? What were their names? Who gave you this assurance? A. The committee itself discussed it and there was the President, Harold Siegel and the — there were the persons who were going going to file the suit who lived closest to the area that was involved.

* * *

[765] Q. Let me read what your husband said in his sworn answers to interrogatories.

First on this matter of the legal fund, I quote:

"Doctor Stern proposed and Mrs. Skolnik supported along with other members of the Steering Committee the consideration of CFPG legal fund to assist the interested citizens in legal actions to enforce land use in accordance with the covenants and the City Master Plan and to contest other actions respecting the development of the City of Greenbelt which was considered by the organization to be contrary to the best interest of the community."

Is this a true statement? A. Yes.

* * *

[769] Q. Now you were soliciting people who were going to solicit people from the legal fund. A. I wasn't soliciting. People were going to call me who wanted to solicit.

Q. What were you going to do with these names? A. I was going to turn it over to our Chairman or to whoever — whoever was in charge of this. I don't remember just right now.

* * *

[770] Q. Now you are a member of G.H.I.? A. Yes.

Q. This means that you have some small financial interest in its affairs; correct? A. Well, we have a house. It is a cooperative.

Q. But you along with 1585 others own the corporation, do you not? A. That is right.

* * *

[774] Q. Do you know what the proper definition of "blackmail" is, you know that it is a crime, do you not? A. No. It could be a crime, especially it is a crime when you think someone has exerted the money or tried — where you are being paid off or where you can land in jail.

Q. Right.

Well was Mr. Bresler involved in the crime of blackmail as a result of what he was proposing to

the City Council or Board of Education? A. Not the crime of blackmail.

* * *

[775] Q. I am asking you if you think the word "blackmail" was a proper description to be applied to what Mr. Bresler was asking the City Council or the Board of Education to do. A. In the context of the meeting, yes, it was proper.

Q. I am not asking for qualification. We understand it was a heated meeting. I am asking you.

MR. CHASANOW: Would you repeat the question, Mr. Reporter?

(Question read)

THE WITNESS: It is hard for me to judge what is proper or not. I just really find it very difficult to answer that question.

BY MR. CHASANOW:

Q. One of the reports was using a word there in the paper which you felt would be unfair or unjust, would you permit the use of that word? A. If the reporter — I was not the reporter on this. I did not. I am not at the editorial desk. But when I [776] read this over the word didn't bother me at all.

Q. The word "blackmail" didn't bother you at all? A. No, I was at the meeting and this was exactly what was said. And it was not in the sense that it was a crime.

Q. Did the newspaper report everything that was said at that meeting? A. It gave viewpoints — viewpoints of all — all viewpoints, I think.

Q. I am not talking about viewpoints. I am talking about words used. Did it report verbatim everything that was said at that meeting? A. It couldn't everything that was said at the meeting, but this was the gist of the meeting. This was the meat of it.

Q. The meat of it was blackmail? A. The meat was the descriptions of people's opinions about, concerning the proposal and there were all viewpoints used. In fact — yes, I think it was reasonable account of the meeting.

* * *

January 9, 1968

* * *

[800] THE COURT: The allegations on the article on the Comptroller doesn't bother me too much, but the others don't.

* * *

[804] THE COURT: There is one question.

Is there any, and I don't see it in the case, is there any indication of a contention by the defendant of the truth of the statements? It wasn't pleaded.

MR. CLARK: Your Honor, the defense of truth is that you plead that the language used with the innuendo attached by the — pleaded by the plaintiff is true. We do not contend —

THE COURT: You don't have to go in and explain to me what we are talking about. The Court knows the allegation that the statement was true.

MR. CLARK: But we have no —

THE COURT: No pleadings in the case that I can find.

MR. CLARK: What I am saying is we don't contend that the plaintiff committed blackmail, that is all. We don't intend the plaintiff committed the crime of blackmail.

* * *

[805] THE COURT: Well, the Court will not change its opinion from — since the ruling on the motion after the plaintiff had rested his case. The Court is not familiar with the Kansas case, it is not familiar with the Illinois case or the Louisiana case, because it is the first time I have seen them.

The Court is of the opinion that in this case, and the Court intends in its instructions to the jury to make these things crystal clear as to what they must find, but the Court is of the opinion that there is sufficient evidence presented in this case by the plaintiff, as I previously ruled, with the additional testimony solicited from the other witnesses which make it a factual question as to whether the requirements of law have been met from all the factual circumstances surrounding the whole transaction.

The cases you cite to me of one instance of an irresponsible allegation made against a particular plaintiff.

Now the Court looks at this evidence here as a series of incidents involving a defendant newspaper corporation and Mr. Skolnik and the present plaintiff, as evidenced from the testimony running from some time prior to May 17, 1965 and all through up until he was — I think the *** [806] became a candidate for Comptroller was the last exhibit the Court recollects having seen. So I question that this is a fact the jury, and the Court intends to be very explicit in its instructions in telling the jury that they must find in fact malice from the evidence in the case. They may take all the evidence in consideration in determining that or a reckless disregard of whether it was true or false from all of the evidence, not from one by the witness, but from any and all witnesses.

And further reason, the Court determines that the issues and the evidence both from the plaintiff and the defendants testimony presents a question which is one for the jury to resolve as to whether or not this action by the officers of the corporation and the individual defendant was in fact with actual malice, knowledge of it being false or reckless disregard of whether it was true or false.

The Court recognizes the principles of comment privilege, qualified privilege, fair comment, but is of the opinion at this stage of the evidence, in this case, that we do not have one shot publication as was in the Sullivan case, but the most analogous case is the Butts case, which, of course, was information gained from a source and investigated by a reporter subject to it being as a feature. This case is different in that we have here a series of publications and circumstances covering many incidents and [807] allegations by which only the jury would properly determine whether the rules established by the Court, Supreme Court, are in fact met.

* * *

[810] THE COURT: Mr. Foreman and gentlemen of the jury:

Being experienced jurors you now realize it becomes my responsibility to instruct you in this case. In giving you my instructions I wish to emphasize that although what I shall say about the law is binding on you, that is you must follow it and apply the law to the facts in reaching the verdict, nevertheless what I shall say to you about the facts and about the witnesses and the evidence produced by those witnesses is purely advisory and not in any way binding upon you. It is your function to decide on the truth of the testimony as given by the various witnesses. Whatever I say on the facts will be only for the purpose of attempting to make the issues clear and not with any idea of influencing your decision on them. That is your responsibility.

You are advised that the evidence is not determined by the number of witnesses on either side of the case, but your interpretation of the quality of the witnesses.

You have a right to equate in your own mind the testimony given by the witnesses and give it the credibility [811] which you see fit to give.

In addition thereto, any questions that might have been asked by the judge shall carry no more weight in your mind than that asked by either one of the attorneys. Any question the Court might ask would only be for the purpose of bringing issues out which it thought was material for you folks to reach a judgment. So there is no emphasis to be given, only reference to the questions or answers the Court asked.

In this case we are confronted with a civic matter wherein the plaintiff, Mr. Bresler, has alleged in his declaration that the corporate defendant, Greenbelt Cooperative Publishing Association, Inc., Mr. Alfred Skolnik, as an individual, have libeled him and he is claiming damages as a result of having been libeled.

Before the plaintiff in this case, Mr. Bresler, may recover in this case, you must find that he was libeled.

Libel is the publication of words, pictures or symbols which imputes to a person a crime or a disgraceful or dishonest or immoral conduct or is otherwise injurious to the private character or credit of the person in the minds of a considerable and respectable class in the community. One who publishes a libel of that nature is liable in damage, unless the same be matter which in law is termed privileged fair comment, which the Court will explain to you later — [812] not later, but in these instructions.

You are instructed that the burden is upon the plaintiff to establish by a preponderance of the evidence that the publication imputed to him a crime, or disgraceful, dishonest or immoral conduct or was otherwise injurious to his private character or credit, and if you are unable to conclude from the preponderance of the evidence that the publication bears a meaning ascribed to it by the plaintiff, or if you find that the evidence is equally balanced on that issue, then your verdict must be for the defendant.

The law presumes, until the contrary appears, that every person has a good character and has done nothing to forfeit the good opinion of the community. The law regards a good reputation as valuable to its possessor, and the publication of a libel by which a good name is impaired is an injury for which damages may be recovered.

In considering the publication complained of, you must consider the publication as a whole — the Court would say in this case we are talking about serious, number of publications — and determine the meaning of the publication and how it would be understood by ordinary readers from the entire context thereof with the other facts and circumstances shown by the evidence.

Where a publication is susceptible of two meanings one of those which would be libelous and the other not, it [813] is up to you to say which of the two meanings would be attributable to it, by those to whom it is addressed or by whom it may be read. In reaching your decision you can consider all the circumstances

surrounding the publication, which includes all of the evidence which has been admitted.

It is no defense that in making the defamatory statement the defendant either repeated or quoted a statement by another. It makes no difference whether a defamatory statement is originated by the defendant or merely repeated by him or it, and I use it, because we are talking about a corporation as well as an individual, on the basis of a statement made by it or him.

You are instructed as a matter of law that one who repeats another's defamatory statement is legally responsible unless the story is true, the repetition privileged — I will repeat that — unless it is true, the repetition is privileged, which I will define for you in a minute what privilege is — or the plaintiff consented to the publication.

Now we get to the truth aspect. Remember I said unless the story is true, repetitious, fair comment or the plaintiff consented to the publication.

Going to the factor of the truth, there is no contention in this case, it is conceded by the defendant these allegations were not true. That is that Mr. Bresler [814] was guilty of blackmail.

There is no evidence before you, no contention by the defendant that they were true.

Moving to the next factor in that definition, fair comment:

The defendant has raised the issue of whether the article complained of was, what is called in the law, fair comment or criticism and it is your duty to decide that issue based upon the explanation which I am about to give you.

In matters of public interest, the law recognizes the importance of free discussion and the right to express opinions, comments, and criticisms concerning such matters. Thus it accords to the press and the general public the right to comment upon and criticize those matters of public interest freely and openly. But this right to express opinions on matters of public interest is only present where the fact and

criticism and comment are drawn are true. It is only insofar as the facts set out by the publisher are true that he would claim the right of free and open criticism of open comment on those facts. Thus at the outset if you find the basis on which the criticism or facts are made are true, then you must not find on the issue of fair comment.

If, however, you determine that the facts on which the criticism is based are true, then you must decide whether [815] the criticism or expression of opinion complained of was fair. You are instructed that in order for the criticism to be fair comment in the eyes of the law it is not necessary for you to personally agree with it or even the majority of reasonable men would agree with it. It is only necessary the criticism be one which a reasonable man could draw from the fact even though it is not the correct criticism or opinion of the most reasonable criticism or opinion. Accordingly, if you determine the criticism or opinion in the article complained of was one which an honest person could reach, you must find for the defendant on the issue of fair comment, unless you determine by a preponderance of the evidence that the comment or criticism did not actually represent the opinion of the author, but instead was published with malice or a reckless disregard of whether it was true or false.

The Court would here emphasize that the newspaper or a publisher has a right and responsibility to attend meetings, to listen to what is going on, and to rely upon people which it knows or has very good grounds to believe are responsible citizens. And such statements repeated and/or published, unless with actual malice, or knowledge that they are false, reckless disregard for whether they are true or false, is not libel.

The law recognizes the importance of free discussion [816] and criticism and matters of public interest to the extent that it grants immunity even with respect to the publication of foolish and prejudicial criticism if they are not published with malice, knowl-

edge of their not being true, it is knowledge they are false, or reckless disregard of whether they are true or false. The right of comment or criticism that has been explained to you is the same whether the defendant is a newspaper or a member of the public generally.

If you find that the publication complained of relates to a matter of interest to one or both of the parties to the publication or communication and that the means of publication was reasonably adapted to the protection of that interest, you are instructed that the publication is qualifiedly privileged and your verdict should be for the defendant unless you find that the publication was made with actual malice, knowledge of its falisty, or reckless disregard of whether it was true or false.

The Court, only for the purpose of bringing that into focus — this was what I have just defined as a qualified privilege. An absolute privilege would be where a person, in a judicial function, Congress of the United States, on the floor, would be immune from libel and that would be what we call absolute immunity. And I just explained the next step in that which is qualified immunity.

[817] Another qualified privilege would define the publication made of — complaint was made in the line of general duty whose function it was to make such a publication. You are instructed the publication is qualified privileged and your verdict should be for the defendant unless you find again the publication was with actual malice, knowledge of its being false or reckless disregard of whether it was true or false.

Now having given you as a basis — definition in each of these principles, the word malice — and the Court feels obligated to define that word for you — the Court would indicate that Black's Law Dictionary indicates malice as follows: the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances of the law would imply an evil intent.

In addition thereto, the Court has instructed you that if you determine the defense of qualified privilege asserted by the defense applys to this case, that is fair comment privilege, the plaintiff must then prove by a preponderance of the evidence that the defendant published the article complained of with actual malice toward the plaintiff. Therefore, the Court will now again define for you another indication of what malice is. Actual malice involves the state of mind that the defendant, best described as spite, hostility or deliberate intention to harm. Further, although [818] honest indignation and strong words are not evidence of express malice, or actual malice, actual malice may also be present in the eyes of the law if you determine by a preponderance of the evidence that the defendant's conduct, published in the article complained of constituted malice, reckless disregard of whether they are true or false.

By these definitions you can easily see that actual malice does involve a state of mind. Naturally, the state of a person's mind cannot be proved directly since no one can see the operation of the mind of another human being.

And here I might stop and indicate that as to the corporate defendant we are talking about the officers, editors and those people responsible for running the newspaper. Because it has to be the acts of the officers as far as corporate defendant is concerned. Therefore, the presence or absence of actual malice on the part of defendant may be inferred by you from the circumstances of the case, including the things that were done, things that were said, as well as from the testimony of the defendant as to it and their own state of mind. Consequently, in determining whether there was actual malice on the part of the defendant, in the publication of the articles complained of, you may consider all the relevant evidence in the case, including the character of publication, the circumstances which inspired its publication, the presence or absence of a reasonable basis for [819] making the statement, and the presence or absence of provocation.

With respect to your consideration of presence of actual malice on the part of defendant, you may infer its presence from the language or circumstances of the publication, but this may be done only if the character of the publication is so excessive, intemperate, unreasonable and abusive as to defy any other reasonable conclusion than that the defendant was moved by actual malice toward the plaintiff.

Now we move on from the principles which we talk about as libel and we get to the question of damages because this libel suit, as I told you to begin with, is alleging libel and claiming damages which will be defined to you as follows:

If you find that the matter published by the defendant was libelous of the plaintiff as that term has been defined to you, then your verdict must be for the plaintiff, either for nominal damages or for compensatory damages. I shall now explain for you the difference between these two terms.

The term nominal damages means a trivial sum such as one dollar and shall be awarded if the publication does — did not result in any loss to his reputation. It is intended to vindicate a plaintiff whose legal rights have been technically violated but who has sustained no damage. Such a [820] decision on your part does not mean that you may not award punitive or exemplary damages against the defendant, if you determine them to be properly assessable under the instruction which I shall later give to you on the subject of punitive damages.

Further, the term compensatory damages means money which is awarded to a plaintiff as compensation, indemnity or restitution for harm actually sustained by him and to be sustained by him in the future. Therefore, if you determine that the plaintiff sustained a loss of reputation as a direct result of the publication complained of, your verdict should be for compensatory damages.

In this connection, if the article was libelous of and concerning the plaintiff, then the law presumes that there was that amount of loss of reputation which

in your judgment would be a natural and probable consequence of such a publication. In fixing the amount of the verdict, you should consider the following elements:

(1) such sum as will be a fair financial equivalent for the detraction from his good name and reputation which the publication caused;

(2) such sum as will fairly compensate him for the mental anguish, distress, humiliation, and physical injuries, if any, which you find resulted directly from the publication; and

[821] (3) such sum as will compensate the plaintiff for the injuries you find from the evidence have resulted from occupation or business.

You are not to return separate sums for each element that I have mentioned but, if you determine that a compensatory verdict is warranted, you should take these elements into consideration and return a compensatory verdict in one amount.

Punitive damages are claimed in this case.

There is another type of damages being sought by the plaintiff in this case — punitive damages. I shall now explain that term to you and outline for you the circumstances under which an award of punitive damages may be warranted.

Punitive damages, sometimes called exemplary or vindictive damages, may, in certain circumstances, be awarded by you, in addition to the verdict for compensatory or nominal damages. Punitive damages do not partake of compensation to an injured plaintiff. Rather, the law permits juries in civil cases to assess punitive damages against the defendant as punishment for outrageous conduct and as deterant to others to refrain from engaging in such conduct.

Punitive damages may be assessed against an individual defendant when the publication of a libel was [822] done with actual malice toward the plaintiff, or when the defendant acted with recklessness or wanton indifference to the rights of the plaintiff.

In deciding whether in the publication complained of the defendant was acting with actual malice to-

ward the plaintiff, you should consider all the circumstances and evidence of the case. You should consider the intent with which the matter was published, the motives of the defendant in publishing the matter, the presence or absence of provocation for the publication, the presence or absence of reasonable grounds for making the statement. You shall also consider the manner in which the defendant received the information on which the publication was based, whether the defendant exercised an honest judgment or whether the publication was based on information received from persons whom the defendant believed to be reliable persons. If after weighing and considering these facts you are convinced the defendant acted with actual malice toward the plaintiff, then you may, I am not saying you shall, you may, assess punitive damages against the defendant. Whether to do so, even if you find actual malice, is within your sound discretion; the law does not require you to assess punitive damages. If you decide to assess punitive damages the amount of such damages is left to your good judgment.

Now, finally, the defendant in this case is a [823] corporation — one of the defendants is a corporation. Since punitive damages, if warranted at all, are only assessed against the defendant who participated in the publication, even if you find that the employee of the defendant corporation acted with actual malice toward the plaintiff, you may not award punitive damages against the defendant corporation unless you further find that the corporation acting through its officers, directors or managing agents either specifically authorized this particular publication or after it was published and with full knowledge of the fact ratified and approved the publication.

Now the Court will also instruct you with the definition of blackmail. Black's Law Dictionary defines the extortion of money by threats or overtures toward criminal prosecution or the destruction of a man's reputation or social standing.

So much for the law in this case.

The Court only in culmination of this would advise you that you must find, as I have told you the burden of proof is on the plaintiff to prove by a preponderance of evidence the allegation of libel. With the law that I have given you you are obligated to find malice, knowledge of the falsity, reckless disregard of what is true or false in order to find the plaintiff. And if you find these elements then you may find for the plaintiff. Otherwise you will [824] find for the defendant.

Now in a case such as this, the Court, as you probably have observed, has taken many notes and it is not the Court's intention to any way influence you in any emphasis that any one of you as individual or as you collectively would give to the testimony of any particular witness.

In fact, the Court is going to comment very little on the facts in this case because you have been a very attentative jury, you have paid close attention and I will only remind you and give you a resume who the witnesses were and what — and which side they represent. If you will remember the plaintiff in the case called the defendant, Mr. Skolnik, as his first witness. Mr. Skolnik indicated that he was an official of the corporation, his wife's name was Elaine Skolnik and his duties was to preside over the editorial board and from time to time participate as a member of the editorial board; indicated that the testimony that they met I think every Tuesday night to review the proposed publication that would go in the newspaper, that is the editorial portions of the board were there, some of them there every Tuesday night. And Exhibit No. 1 was the October 14th, 1965 News Review which was placed into the evidence. That may be considered — any and all of these exhibits and what was actually contained in them is — you [825] may have, because they are exhibits, the ones the Court refers to.

The Court would recollect in addition thereto the plaintiff introduced forty-five exhibits — is that correct, Madam Clerk?

THE DEPUTY CLERK: I believe so, sir.

THE COURT: Very well. Then after Mr. Skolnik testified we heard the testimony — and with this witness certain of the exhibits were identified as being the publications of the News Review.

The second witness called by the plaintiff was Mr. Bresler. You have heard Mr. Bresler's testimony regarding the facts in the case and the circumstances surrounding his experience between he and the defendant City of Greenbelt revolving around this set of circumstances.

Then except for the bit of rebuttal testimony that was heard here this morning, that was the plaintiff's case.

For the defense you recollect we had the testimony of Mayor Ed Smith, from the City of Greenbelt, Mr. Lewis Bernstein, who the Court recollects was a citizen that lived there at one time, was on the Advisory Planning Committee and was a member of the City Council for several years.

The Court recollects that the defendant inserted exhibits 1 through 38 with the exception of 17 and 18, 29 [826] and 30.

THE DEPUTY CLERK: And Number 20.

THE COURT: Except — you are correct, except 17, 18, 20, 29 and 30. Do you agree with that? That these are the exhibits you may consider.

We had next Nita Maschauer, which the Court identified to you as being the Clerk of the City Council, keeping of the minutes and identified certain documents and also the person who played the tape recorder for us.

And testimony of Mrs. Williamson, testimony of Mrs. Sucher and testimony of Elaine Skolnik regarding this case.

Then, as I have emphasized, the defense rested and the plaintiff put on his rebuttal testimony and the extent of that testimony by the defendant was surrebuttal. So that in substance is all the Court is going to say to you about the facts of the case.

The Court will tell you that the opening statements or closing argument of counsel is not evidence. The

evidence in this case is the testimony that has been produced by the exhibits and by the witnesses.

Opening statements are for the purpose of counsel to outline to you what they propose to show you, what they propose to prove. The closing argument is argument to you of the contention of what that evidence has proved. So the Court will tell you in addition to paying little or [827] no attention, other than what the Court has emphasized to you, what has been emphasized in this case, questions or lowering or raising my voice in instructions shall be completely disregarded. The same token the Court says that attorneys, in opening statements and closing argument is not evidence. They have every proper right and responsibility to make you a good opening statement and make you a good closing argument. This is what they do and it is their responsibility. That is not evidence. You have had all the evidence in this case.

Gentlemen, approach the bench.

(Whereupon, counsel approached the bench and the following proceedings were had out of hearing of the jury:)

THE COURT: Mr. Chasanow?

MR. CHASANOW: I have no objection to any instruction given by the Court nor to the exclusion of any instructions which plaintiff offered.

MR. CLARK: Your Honor, I object to Standard Jury Instruction No. 200, which talks about actual malice and spite.

I object to Standard Jury Instruction 190, 192 and 193 where Your Honor referred to —

THE COURT: Just back up a minute. You started off with 200.

[828] MR. CLARK: 200. See, my specific objection — I will ask that instruction be withdrawn.

THE COURT: Well now you recognize that the Court didn't use this actual instruction. It used an outline and I didn't use that portion of it which — what my instruction indicated it was to be with — what the public constituted as actual malice know-

ing it to be false or actual disregard of the truth. I didn't use this.

MR. CLARK: My understanding of the transcript, and we will let that speak for itself, you used the word spite, hositility or deliberate attempt to villify the plaintiff and I object to the word spite and hostility.

THE COURT: No, the Court used that in a — the Court stated in your objection — I know what you are after — indicated in explanation of what a state of mind would find and I used spite and hostility, but went further right in that phrase and said it must be actual malice, knowledge of its being false or reckless disregard of whether it is true or false.

You have your exception. The Court will overrule it for the reason I have given.

MR. CLARK: I object to your instruction with respect to Standard Jury Instruction 190.

THE COURT: Which?

MR. CLARK: 190, in which Your Honor departed [829] from the language of the Standard Instruction and told the jury they would be able to find for the plaintiff if they found actual malice or knowledge of falsity or reckless disregard of the truth.

THE COURT: That is precisely correct and the Court intended to do that and overrules your exception because I think it was necessary I depart from it to come within the recent case law. That is the reason I did it.

MR. CLARK: Thank you, Your Honor.

I object to 192 and 193 for the same reason, that Your Honor allowed the jury to think actual malice might consist of something beside knowledge of falsity or reckless disregard of the truth.

THE COURT: No, the Court has no recollection. The Court did not use 192. If you check the transcript you will find I didn't. I changed it. I merely told you gentlemen I was going to use this as a basis — outline. What the Court said, made with actual malice or knowledge of it being false if reckless disregard of whether it was true or false is what the Court used.

MR. CLARK: That is what I object to, Your Honor.

THE COURT: You object to —

MR. CLARK: Yes. That statement does not make it clear to the jury that under the constitution actual malice is limited to knowledge of the truth or reckless [830] disregard of the truth.

THE COURT: In other words, what you are saying to me is knowledge of it being false and reckless disregard of whether it is true or false by the — are the elements of malice.

MR. CLARK: The only evidence of malice.

THE COURT: The Court will not agree with you. The Court will recognize in the various decisions this term has been used so interchangeably it does present a problem. In one of the cases which you folks referred to it in your memorandums and I couldn't believe the same Court had interchangeably said that the basic elements of libel was actual malice or knowledge of it being false or reckless disregard of whether it is true or false. But whether the Court used it in another case, I forget which case it was, actual malice, which is knowledge of it being false or a reckless disregard of whether it was true or false. It is in the case, that is indicating that is a definition of malice. I don't think that was the intention. I think there were three elements in other Supreme Court cases on this particular subject, which says with actual malice or knowledge of the statement being false or a reckless disregard for whether it is true or false. And I don't think the Court intended to use those two phrases as a definition of malice. Maybe we will find out from this case which they [831] meant. I recognize why you are saying that.

MR. CLARK: Your Honor —

THE COURT: But I contend that actual malice has not been, and the Supreme Court decision which you speak of treated differently in the two different opinions. I realize that.

MR. REICH: You compromise in some of the decisions that come —

THE COURT: I will say this. This is something for you gentlemen to think about, whether the Supreme Court intended to — I have stated it does in that decision which you have quoted. We may have some further identification on it, but anyway, I want that in the record because I have reviewed it and find this to be a reported situation.

MR. REICH: You mean a separate element.

THE COURT: No. You have made these objections to instructions because I didn't say that malice was knowledge of it being false or reckless disregard. I am saying actual malice is one thing, knowing that the statement was false is Item 2 and a reckless disregard of whether it is true or false is Item 3.

MR. REICH: Yes. We object.

MR. CLARK: Your Honor, I didn't want to belabor the point but I would like to formally make my request — request a Charge No. 2 and ask that be admitted into the [832] record.

THE COURT: I am not going to use it. I did open up this public official or public figure aspect of the case. I used it but not in the way you have got it.

MR. CLARK: Your Honor, I formally ask that you give my requested charge No. 4.

THE COURT: I won't give that because I have completely covered that in my previous instructions and I am not going to get repetitive on any one of these items.

MR. CLARK: Your Honor, this will be in the record in the case.

THE COURT: Well, you have filed with the Court, which will be left in the record, your defendant's request for Charge No. 4. I have — I am denying that because the Court is of the opinion it actually covered that in its other instruction and I will not make repetitive instructions at the request of either side.

MR. CLARK: I now offer formally —

THE COURT: You offer what?

MR. CLARK: I now submit to Your Honor my re-

quest for instruction No. 5 and ask that be made a part of the record.

THE COURT: I would indicate to you that has been covered by the general instruction and I deny it.

MR. CLARK: All right. I will also ask that [833] defendant's instruction requested Charge No. 2 —

THE COURT: I indicated to you that I will cover this principle of public figure, public official, but I will not use it exactly as you have it. If you are not satisfied after I give it you may return to the bench and object.

MR. CLARK: Do I understand Your Honor that will be a part of the record?

THE COURT: The one you gave me will be a part of the record.

MR. CLARK: No. 2.

THE COURT: You are on the record and nobody disagreeing this is the same one of the ones you gave me yesterday — this morning.

MR. CLARK: The only thing is Your Honor, this is going to be the only record of transcript I will read into the record.

THE COURT: You delivered to me. Is this the same of a copy you delivered to me this morning?

MR. CLARK: Yes, Your Honor.

THE COURT: They will be in it if — they will be in for the purpose of identification. If somebody filches them out of the file somewhere I would certainly indicate that I have a knowledge of what they are. This is the same with anything else that is filed in the case, for [834] all intents and purposes they will be in the file.

MR. REICH: But we want them for the record.

THE COURT: This is already a part of the record.

MR. CLARK: All right. Thank you.

Can I have my copy?

MR. CHASANOW: All through?

MR. CLARK: I am finished. Yes, Your Honor.

THE COURT: Get going

(Whereupon, counsel returned to the trial tables and the following proceedings were had in open court in the presence and hearing of the jury:)

THE COURT: The Court will give you one additional instruction as a matter of law, that in a suit for libel you have a treating differently of different people. A public official or a public figure, the law permits under the question of privilege or fair comment a wider latitude. In other words, in matters that are of general public interest, the articles complained of were, if you find by a preponderance of the evidence was public activities, there is a constitutional protection for publication of matters regarding a public official or a public figure. There is no denial in this case Mr. Bresler was not a member of House of Delegates and a candidate for Controller of the State of Maryland when the last article was published. And the plaintiff cannot recover unless you find, as I say [835] again, by a preponderance of the evidence, that the articles were published with actual malice, knowledge of their being false, or reckless disregard of whether they were true or not.

Anything further, gentlemen?

(Whereupon, counsel approached the bench and the following proceedings were had out of the hearing of the jury:)

MR. CHASANOW: I ask that the Court qualify that last instruction with reference to public official, that it is with respect to the performance of these official duties that this would imply.

THE COURT: I think I said that didn't I? Didn't I say that?

MR. CHASANOW: No, sir.

MR. CLARK: I think you made it clear to me. But it is your objection.

THE COURT: Anything further?

MR. CHASANOW: No, sir.

MR. CLARK: I would object to the instruction, Your Honor, on the same basis I made my previous objection.

THE COURT: Very well, you have it.

(Whereupon, counsel returned to the trial tables and the following proceedings were had in the presence and hearing of the jury:)

[836] THE COURT: Very well, the Court would add one thing. In reference to the last instruction I gave you, with reference to his official conduct or words as a public official or public figure.

Gentlemen, how much time?

MR. CHASANOW: Thirty or forty minutes if the Court would indulge me.

THE COURT: The Court didn't hear you.

MR. CHASANOW: I would like between thirty and forty minutes.

THE COURT: Mr. Clark?

MR. CLARK: About the same, Your Honor.

THE COURT: Very well, proceed, Mr. Chasanow.

Gentlemen, the Court has become so interested in what is going on that it is now one o'clock and I can see this jury here from 1, 2 o'clock without lunch. I think it would be highly desirable if we probably have our recess now and let you argue when we return. Counsel agree with this?

MR. CHASANOW: Yes, sir.

THE COURT: So after the closing argument they can go out and deliberate.

MR. CLARK: May we approach the bench?

THE COURT: Yes, you may.

(Whereupon, counsel approached the bench and the following proceedings were had out of hearing of the [837] jury:)

MR. CLARK: Your Honor, when we were at the bench a moment before I didn't realize we were going to give the argument — the instruction on official conduct. I think the jury is going to be confused there, a public figure is not a public official. So how could you have official conduct that Your Honor has instructed with respect to public official. He commented with respect to their activities was of interest.

THE COURT: This is precisely correct and this is what I said.

MR. CLARK: I don't believe so, Your Honor. I think the record will show you didn't make that clear. I would like, since I thought — it is an emphasis now on official conduct that it should be made clear with respect to public officials the comment must be not with respect to their official activity because they don't have any official but with respect to their public activity which makes them public figures.

THE COURT: What did you say?

MR. CLARK: Your Honor just instructed the statements as to public officials and public figures.

THE COURT: Yes.

MR. CLARK: Must be with respect to their official conduct. I think that will confuse the jury [838] because public figures are not officials and therefore do not have official conduct. The controlling testimony is with respect to public figures the statements must be concerned — must be concerning their activities.

THE COURT: In other words, you are contending Mr. Bresler in addition to being a public official is a public figure and whatever definition you want to use you can catch him under?

MR. CLARK: That is correct.

THE COURT: No. You have your exception. Proceed.

(Whereupon, counsel returned to the trial tables and the following proceedings were had in open court in the hearing and presence of the jury:)

THE COURT: Mr. Foreman and gentlemen of the jury:

Mr. Reporter. In addition to what the Court gave of its reason for not going further with this instruction at this time, as to official conduct, public figure, public official, it would put the instruction completely out of proper context as to the emphasis on this particular subject in the instruction.

THE COURT: Mr. Foreman and gentlemen of the jury:

As the Court said in the other recesses, you will not discuss the evidence among you until it has been submitted to you after argument of counsel.

The Court will now recess until 1:10.

[839] (Whereupon, at 12:07 o'clock, the jury was excused.)

THE COURT: Let's change that. The jury will be excused until 1:10. The Court will proceed with another case or another business.

(Whereupon, the jury left for lunch and the Court took up another matter not related to the suject case.)

[840] AFTERNOON SESSION (1:18 p.m.)

THE COURT: Counsel approach the bench.

(Whereupon, counsel approached the bench and after an off-the-record discussion the following proceedings were had out of the hearing of the jury:)

THE COURT: Now the Court is going to give an additional instruction using the exact terminology extracted from New York Times vs. Sullivan, 378 U.S. 254 on this subject about the public official or a public figure. In addition to that it is going to use the phraseology used in the Garrison case, 379 U.S. at 74, which defines the principles upon which libel may be based in these most recent cases, so that the jury will know what these two recent cases do say, as to what the law is and will point out to you, Mr. Clark, that your contention accepts conclusively the excerpt from New York Times vs. Sullivan, 376 U.S. Page 279-80, what the Court says: "— unless he proves that the statement was made with 'actual malice' — that is with knowledge that it was false or with reckless disregard of whether it was false or not." is intended to be a definition of malice.

MR. CLARK: I agree with that. That can be the only definition of malice.

THE COURT: And I say to you that the same Court's phraseology in the Rosenblatt vs. Baer case, cited by you [841] in your memorandum and also the Garrison case — the citation to the Rosenblatt vs. Baer is 383 U.S. at 75 and your quotes in Garrison, 379 U.S. at 74 are inconsistent with that conclusion and the point that you made. That is the reason the Court has seen fit to give this additional instruction

in order to clarify the jury's mind, as a result of what happened before lunch.

MR. CLARK: May I be heard on one further point, Your Honor?

THE COURT: Yes.

MR. CLARK: What?

THE COURT: Yes.

MR. CLARK: The Sullivan case talks about a public official and I think Your Honor should make it clear to the jury that that same rule applies to public figures and does not apply to official conduct of public figures, because they don't have official conduct. The rule of the New York Times applies to statements about public figures with respect to their activities about public interest. I think it has to be made clear. Furthermore, Your Honor, I would say you would have to go back and tell the jury that evil motive as you have instructed the jury, in spite, do not constitute actual malice under the definitions of the Constitution.

THE COURT: Well, the Court has no recollection [842] of using the words "evil motive." You won't find it in my instruction. You will find the word "hostility." And one other word I completely and appropriately ignored, "ill will" being evil motive. The Court recognized that.

There was some other word that I used of the instructions which was — but it wasn't "ill will" or "evil motive," in defining the crime of motive, not in saying that this is the basis for finding of libelous action.

MR. CLARK: I don't question Your Honor —

THE COURT: Well, we disagree, you have made your point.

MR. CLARK: I would only again suggest, Your Honor, there is a reasonable question as to whether that has been said and the law is clear and —

THE COURT: Mr. Clark, you have made your point.

MR. CLARK: Thank you.

THE COURT: You recognize what the Court is saying to you. I recognize your contention, I recog-

nized what we are confronted with here. These two cases seem to disagree on this definition. It is novel, it is new, and it may have to be adjudicated by somebody beyond this.

MR. CHASANOW: May I say a word?

THE COURT: No; no.

MR. CHASANOW: Would Your Honor, in giving this [843] additional instruction, point out to the jury this is intended for clarification, is not to be given any more or less emphasis than any other instruction.

THE COURT: That is right. If you have objection to it you may come forth and state them.

(Whereupon, counsel returned to counsel tables and the following proceedings were had in open court, in the hearing of the jury:)

THE COURT: Very well, Mr. Foreman and gentlemen of the jury: The Court added to my original instruction regarding public officials, will include public figures, because in the manner which it was done I am of the opinion there may be some misconception of exactly what I meant with the original instructions as to public officials and public figures.

I am going to give you the additional instruction, which is the law on this subject. There is no contention here that the statements regarding blackmail were true. The Constitutional guarantee requires a rule that prohibits a public official or public figure from recovering damages for defamatory falsehood relating to his official conduct unless he proves that the statements were made with actual malice, that is with knowledge that it was false or with reckless disregard of whether it was false or not. The same thing is said in the same vein, definition of malice [844] is constitutionally insufficient where discussion of public affairs is concerned unless the plaintiff establishes that the utterances were false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true.

You may approach the bench, gentlemen.

(Whereupon, counsel approached the bench and the following proceedings were had out of the hearing of the jury:)

THE COURT: Mr. Chasanow?

MR. CHASANOW: No objection.

THE COURT: No objection?

MR. CLARK: I renew my objection, Your Honor, in view of the prior instructions that have gone before this, in which malice is averted to as involving hostility, that this should be made clear to the jury that evidence of evil motive, ill will, hostility, does not constitute malice within the definition of the Constitution. And secondly, Your Honor, I object to the instruction on the ground that it does not make it clear that Constitutional protection to comment upon public figures with respect to their public — their activities in the public interest as opposed to their official conduct because they are in the official — they have no official duties and are not officials.

[845] THE COURT: Very well, you have your exception.

Proceed, gentlemen.

* * *

PLAINTIFF'S EXHIBIT 1

GREENBELT NEWS REVIEW

Volume 20, Thursday, October 14, 1965 Number 48

School Site Stirs Up Council Rezoning Deal Offer Debated

by Dorothy Sucher

Delay in construction of a new Greenbelt high school is the lever by which a local developer is pressuring the city to endorse his bid for higher density rezoning of two large tracts of land; so citizens heard at a well-attended special meeting of the City Council on Monday night, Oct. 11.

For the past nine months, the Board of Education has been trying to acquire land owned by Consolidated Syndicates, Inc. (Charles Bresler-Theodore Lerner), for a high school site. The landowners, developers of Charlestowne Village, also own other tracts of undeveloped land in Greenbelt.

LATE BULLETIN

The County Board of Education announced on Tuesday that it was directing its attorney to reopen negotiations immediately for the acquisition of the Capital Beltway site for the Greenbelt Senior High School. The Board said that negotiations would be based on the appraisal value of the land and would not involve any other conditions such as rezoning of other properties.

The Board also directed its attorney to proceed with its condemnation suit against the owner of the proposed school site, Consolidated Syndicates, Inc. (Bresler-Lerner). The suit which had been removed from the trial list last September pending a settlement, will now be returned to the active trial list.

The Board announced that federal funds that had been appropriated last year for the Greenbelt high school will now be diverted for acquisition of other school land. However, the Board stated that other funds will be available for the Greenbelt site.

The developer has refused to accept the Board of Education's price, and condemnation proceedings have already been delayed three times (see accompanying story for details). Orginally, it was hoped the new school would open September 1966.

Some time ago, it became known that the developer would agree on the price, provided the city would help him obtain higher density rezoning for two of his tracts (Parcels 1 and 2, totaling 230 acres) near the center of Greenbelt. If the city refused, he threatened to delay the school site acquisition as long as possible through the courts.

This "deal" as it was termed by several citizens at Monday's meeting, has been rumored for months, but only became public knowledge recently. It was categorically opposed by Nathan Shinderman, a Board member of Greenbelt Homes, Inc. (GHI), who read a lengthy statement by GHI president Charles Schwan (for full text of statement, see p. 2).

Blackmail

"It seems that this is a slight case of blackmail," commented Mrs. Marjorie Bergemann on Monday night, and the word was echoed by many speakers from the audience.

Councilman David Champion, however, denied that it was "blackmail," explaining that he would rather "refer to it (i.e., the negotiations—Ed.) as a two-way street."

Speaking from the floor, Gerald Gough, commented: "Everyone knows there's a need for a school—just walk through the halls of High Point. The developer knows there's a need and says, 'we'll meet your need if you meet our need.' In my opinion, it's highly unethical."

Councilman Champion painted a gloomy picture of possible eventualities if the city refuses to comply with the developer's request. He asked: What if the condemnation proceedings go ahead, and the developer somehow manages to persuade the County Commissioners to rezone the school site, or somehow manages to jack up the price to the point where the Board of Education won't acquire the land? What if a school then has to be built on the Smith-Ewing property? What if it has to be a high-rise school? What if the athletic events have to take place at Northwestern High School? What if the students have to go to school by bus? What if a Junior High School site also somehow gets involved?

Champion did not say he favored accepting the developer's proposal.

Delay Probable

Mayor Edgar Smith remarked that it should be made clear that refusing the developer's terms did not necessarily mean the loss of the school site; that it would, however, probably mean a two or three year delay in the construction of the school.

Former Councilman Clifford Simonson, speaking from the audience, argued that to comply with the developer's proposal would be to "throw out the goal of a balanced community." He described Parcels 1 and 2 as the "last bastion" in which it is still possible to erect free-standing homes in Greenbelt. "We have a choice," he said, "between irrevocable destruction of the Master Plan, after which Greenbelt will never see another free-standing home constructed, and postponng something for a while—two or three years."

Among the parents who spoke was Mrs. Joseph Rosetti, who said: "I have several children going into high school, but I would rather adhere to the Greenbelt Master Plan than overcrowd the town with dense development. I would stand for my children's discomfort, rather than give in to a blackmailing scheme."

Gough commented: "The additional children who move into that area if it is rezoned will nullify any gains you'd make."

Rumors and Facts

"The citizens don't have all the facts," said Champion. "All they have is rumors." He asked how the citizens could possibly have all the facts, when the meeting had only taken place on Thursday, Oct. 7.

Champion referred to a meeting last Thursday between representatives of the city, the developer, and the Board of Education, when Thomas Gwynn, Assistant Superintendent of Schools, formally apprised the city of the developer's terms.

(Inasmuch as the most recent delay of the condemnation suit was granted one and a half months ago on the basis that the parties to the suit were close to an agreement—along the lines of the developers proposal, according to informed sources—it seemed unlikely that the formal announcement last Thursday came as a surprise to any of the parties involved.)

Champion suggested that the City Manager draw up a "statement of facts"; that it be considered by the members of the City Council at a meeting next week; that if the council approved it, a public hearing be scheduled; and that the "statement of facts" be sent to "every registered voter—I beg your pardon, every property owner and taxpayer in Greenbelt." Champion's slip of the tongue brought laughter from the audience. It provided one of the few lighter moments in an evening that was notable for tension and flaring tempers.

What Facts?

Mayor Smith and members of the audience asked what additional facts had not yet been aired, but Champion hesitated to state them, favoring the procedure he had outlined earlier.

When citizens expressed concern that any loss of time might mean further delay in bringing the condemnation suit to trial, Champion finally obliged with a list of additional "facts," emphasising that they were only a random sampling from the notes before him of the complete facts needed before any decision could be reached.

Some of the "facts" he mentoned were the following. What will happen to Greenbelt's children if the school is not built? — temporary classrooms, double shifts, and a change of school sites. Citizens should know that Thursday's meeting included discussion of the need for recreational areas on Parcels 1 and 2; building of a perimeter road around Greenbelt; need for buffer strips around GHI property; need for a road leading to the sanitary landfill; discussion of Parcel 11 as a junior high school site; type of school buildings they're building nowadays; need for a junior high school—when and where; construction of a road over the dam; total amount of double shift time in terms of years; interest cost involved in transferring money.

Not These Facts

Councilman William Hoff asked whether the City Council itself knew all the facts about the transactions with the Board of Education and said: "We weren't ever informed about the money transactions between the developer and the school board."

Champion: "It's not relevant."

Hoff: "I think it is. How much profit is he going to make?"

Champion: "Who among us knows enough about land values to make an accurate determination about amounts of profits?" He explained that this was a complicated matter, and that it was not one of the relevant facts he had in mind.

Speaking from the floor, Mrs. Elaine Skolnik asked that while the Council is studying the situation, it ask the Board of Education to remove the condemnation suit from

the inactive list and put it back on the trial list, to prevent further loss of time.

Champion objected to this suggestion as "unrealistic," stating that the case could not come up for trial before January, when the developer, Bresler (a member of the Maryland legislature), could again request a delay because the legislature meets in January.

Simonson pointed out that the legislature convenes on January 23, which would leave the first three weeks in January for a trial.

No decision was reached. The City Council will discuss the matter further at its meeting Monday night, Oct. 18. Whether or not the facts will be made available by that date, and whether or not the city fathers will then reach a decision, remained in doubt.

Mayor Smith: "I would be prepared to take final action Monday night."

Councilman Richard Pilski: "It doesn't require a three-week delay."

Councilman Francis White: "I think we need more time to disseminate the facts."

Councilman Champion favored holding a public meeting in several weeks to study the facts.

Councilman Hoff did not express an opinion.

Letters to the Editor

An Unethical Trade

We have been following with great concern the county's attempt to build a high school in Greenbelt. As parents of a junior high school daughter, as well as three other children who eventually will attend secondary school, we are eager to see an excellent high school constructed quickly in our city. However, we resent the way in which our needs are being exploited cynically by the land developer who owns the property on which the school is scheduled to be built.

As was made clear in last week's *News Review* and in Monday night's city council meeting, this developer is threatening to stall indefinitely the sale of the site unless the council will agree to recommend rezoning in his favor some other land he owns. Under this pressure, the county Board of Education has asked the council to consider reversing the Greenbelt Master Plan's recommendation against such rezoning. We are being asked to choose between two unpleasant alternatives; badly delayed construction of a much-needed school or a significant departure from our city's master plan.

We do not envy the council its difficult choice. However, we believe strongly that it is a choice the council never should have been asked to make. The two issues should not be confused, and the Board of Education should have rejected the developer's attempt to tie them together. Since it did not, we request that the council reject this unethical trade.

Even if the morality of this situation is overlooked, common sense

would seem to dictate a negative reply. We parents and our children can somehow adjust to a year or two more of overcrowded schools. However, we can never reverse the profound change in the character of our city which would result from junking the Master Plan. While we never should have been forced to make such a choice, we believe that ethical and practical considerations both argue against agreeing to the developer's demands. We hope that other Greenbelt residents will join in indicating this at the next city council meeting Monday.

Miriam and Howard Laster

PLAINTIFF'S EXHIBIT 2

GREENBELT NEWS REVIEW

Volume 29. Thursday, October 21. 1965 Number 49

COUNCIL REJECTS BY 4-1 HIGH SCHOOL SITE DEAL

by Mary Lou Williamson

More than 150 citizens came to hear how the new City Council would respond to pressure by a local developer for higher density zoning on a large tract of land in exchange for uncontested consummation of the sale of a Greenbelt senior high school site to the Board of Education at the Council meeting Monday night.

Council sat quietly listening for more than an hour to citizen statements before voting to reject the proposal (4-1) with Councilman Dave Champion dissenting. Councilman Richard Pilski's motion states that the "Request of Consolidated Syndicates, Inc. (Bresler-Lerner) for the city's support of its zoning requests for parcels 1 and 2 in exchange for the sale of property to the Board of Education for a high school site be denied, and that the Board of Education be urged to pursue the acquisition of the high school site in parcel 15."

Mayor Edgar Smith opened the discussion by inviting members to comment. Champion thereupon moved to table the discussion pending an executive session. Council, he noted, had not yet reviewed a statement of facts on the issue prepared for council by City Manager James Giese. Councilman Francis White seconded. The motion failed, 3-2.

Mayor Smith then directed the City Clerk to read the 4-page statement aloud, and offered the extra 20 copies to the audience. A mad scramble followed, and hesitant hands went away empty.

Champion charged that the public was receiving incorrect information "especially in the local News Review, which contained," he alleged, "two statements, both on page one, that are wrong." (See accompanying article). He offered Giese's memorandum as being "more accurate" in its discussion of the risks involved in delaying the acquisition of the school site.

Giese's Statement

The statement sketched the history of the school site negotiations, and ended by listing seven possible adverse effects if no agreement was reached on the school site: (1) The opening of the new senior high school will be delayed until after 1967. (2) There will be further overcrowding of High Point; (3) The cost of acquiring the land will probably be increased; (4) A jury decision may result in a price too high for the Board to pay; (5) Further delay may force the Board

to select another school site; (6) If the site is abandoned, the land may be rezoned for apartments; (7) If the site for a junior high school (on parcel 11) is also jeopardized by the failure to reach an agreement on the senior high school site, the city may be forced to purchase all of parcel 11 as parkland.

Giese noted, however, that at no time has the Board of Education indicated any intention to abandon either of these school sites. Similarly, he said, no assurances have been given that these sites would never be abandoned under any circumstances.

Giese then described the effects of developing parcels 1 and 2 as R-30 apartments, in accordance with the owners' request. These parcels would then have a population of nearly 7,000. Under the city plan, the ultimate population is estimated to be less than 3,000. If some of the parkland designated by the city plan is zoned for residential use the increase in population would be substantial even if the city plan was otherwise followed.

Giese concluded: "Acceptance of the proposal of the owners will result in the Board of Education being able to proceed with the construction of a senior high school and a junior high school in the vicinity of Greenbelt Lake, but with parcels 1 and 2 being rezoned at a density greater than that proposed in the City Master Plan.

"Denial of the proposal will delay the acquistion of school sites and the construction of schools. There is a chance that the schools may have to be located at other less desirable sites. But the City may get zoning of parcels 1 and 2 at a density less than that approved by MNCPPC in its plan for Greenbelt."

GHI Statement

Charles Schwan, President of Greenbelt Homes, Inc., reading from a prepared text, gave his corporation's unequivocal opposition to the proposed R-30 zoning of all of Parcels 1 and 2. Zoning changes, he reminded council, must be justified on the basis of change in the neighborhood or public need. "The only change has been in the construction of the Baltimore-Washington Parkway, a limited-access highway that serves to isolate the area except as it abuts the Research Center and GHI (both unchanged since the zoning map was drawn)."

Schwan urged the Board of Education to resist vigorously any further delay to a settlement on the value of the land.

Schwan strongly hinted, "It is entirely conceivable that the delay incident to a requested zoning change would exceed that incident to condemnation proceedings."

In conclusion he said, "Now that the Board of Education has announced its intention not to be used by him, we trust that the City Council will take similar action. You will have the support of virtually the entire community if this should be your decision."

Hal Siegal, vice-chairman of the Citizens for a Planned Greenbelt, put into the record a letter written by CFPG to the Board of Education urging that the trial date for the condemnation suit be advanced to November (see page 2).

Citizens Speak

A procession of citizens took the floor to make impassioned speeches —some from prepared texts, some extemporaneously. The mayor occasionally had to caution them to refrain from engaging in personalities.

Albert Herling suggested skulduggery in the September court postponement. Although he praised most of the City Manager's report, he criticized the section entitled "Risks and Conclusions," saying they appeared negative in the extreme. He suggested a list of positive steps that council ought to take: 1) fight Bresler's "blackmail"; 2) make clear to the Board of Education—no deals; 3) make clear to the District Council (zoning authority) unanimous opposition to the requested R-30 zoning; and 4) seek the swiftest possible court settlement. "For anything less," charged Herling, "Would be other than what you believe. And when the chips are down, this is exactly what you'll do."

Emotions rose along with the temperature of the room.

Harvey Geller spoke against the higher density zoning, stating Greenbelt needed more single-family homes, whose owners he felt tended toward greater interest in local affairs and government than did apartment dwellers. In Springhill Lake, with a population of 3,000 (all rental units), only 38 citizens registered to vote in the city elections.

Pilski asked if anyone in the audience cared to speak in support of Bresler's proposal.

Only James Martin took the floor. He suggested that Bresler's action was not "blackmail" but the legitimate advance of his rights to develop his land. Martin suggested, by way of example, that GHI's long-range planning committee had been doing much the same thing some months ago. He alleged that the density of the "frame homes (GHI) is far more atrocious than anything Bresler's considering." GHI Board member Nat Shinderman firmly denied any similarity in method, pointing out GHI's efforts to develop its land are in accordance with the Master Plan. Furthermore the present density of GHI homes (6½ units per acre) is less than half that of Bresler's plan (14 units per acre).

Motion to Reject

Pilski then moved to reject Bresler's proposals. William Hoff seconded the motion.

Champion said, "I think we're being hasty," and stated his intention to vote against the motion. He added that he felt the crowd of citizens present did not represent a true cross section of the community. He felt strongly that a jury settlement of the land value could easily be as high as $49,000 an acre. The Board of Education, he alleged, has never paid more than $10,000 an acre for a school site, in which case the Board would have to find another site. Champion said he would rather see the high school at the land-fill than across the Parkway.

A member of the audience, Harvey Geller, pointed out that no Board of Education condemnation case has ever gone to trial because if it does the jury will determine a fair price.

Final Action

White agreed with many of Champion's statements regarding additional study. He summarized his own attitude by saying that "while the risks (of delay) are great, the problems of higher density somewhat outweigh them. The risks, however, are still with us. Let us not place an iron curtain between the developer and the city council." He offered an amendment that the denial be without prejudice to future negotiations that might result in benefit to the city of Greenbelt.

Pilski urged passage of the motion without qualifications.

The amendment failed 3-2.

After a 10-minute recess to reword the motion, Council quickly disposed of it voting 4-1, Champion alone dissenting.

Smith, at the end of meeting, said "We will meet soon as possible with the Board of Education and try to set up an earlier date for a hearing on the basis of hardship."

(It has been learned that the new trial date is set for April 7, 1966.)

The Limits of Compromise

Somehow a few citizens seem to have gotten the impression that the city's own Master Plan adopted by the previous council in March, 1965, is unfair to developers. They ask whether the Master Plan, 1965, is realistic, alleging that it doesn't take into consideration the developers' desires. The city, it is claimed, must be less uncompromising in its attitude toward the development of the vacant land.

The truth of the matter is that the city's Master Plan *already represents a compromise* between what the city desires and what the developers desire. But some of the developers are not satisfied with half a loaf; they want the whole loaf, and in a few instances, do not seem to care what methods are used to achieve their goal.

Let us take, for example, parcels 1 and 2, the 230 acres between GHI property and the Baltimore-Washington Parkway Originally, Advisory Planning Board members visualized these parcels as being reserved largely for single-family homes. Later, the APB compromised by recommending that strips of land closest to the GHI property be reserved for R-30 apartments. Eventually, the city's Master Plan, as finally adopted, called for more acreage in R-30 apartments (63 acres) than in single-family homes (55 acres). Yet, the developer is not satisfied; he wants the entire acreage in R-30 apartments.

We deny the claims that Greenbelt has not accommodated itself to the needs of the developers and that we must now sit down with the developers and further compromise the Master Plan. We deplore the timorous attitude that says "we'd better be nice to the developers, because we may need something from them some day."

On the contrary, we say that it is time for the developers to grow up to their responsibilities, to accommodate themselves to the wishes of the city as expressed in the city's Master Plan and community goals, and to stop pressuring the city to accept proposals that are against its interests.

PLAINTIFF'S EXHIBIT 3

GREENBELT NEWS REVIEW

Volume 29, Number 9 Thursday, January 20, 1966

Another Crippling Blow

To the Editor:

On January 11 the county board of education and the developer Charles Bresler struck another crippling blow at Greenbelt's Master Plan. Bresler, in flagrant disregard of that plan and the wishes of nearly all Greenbelt citizens, moved to compound even further the serious problems which a senior high school in his land-locked property on parcel 2 would create.

His latest plans for the schools, with modifications made by the board of education, relocate the schools in such a way that they would block the perimeter road, unless a connection is made with the NASA interchange.

The obvious results of last week's actions—if implemented—would be to further seriously undercut the city's master plan. Traffic circulation was the most difficult problem encountered by the city's Advisory Planning Board and professional planner. The perimeter road was to be a vital link in a system designed to handle modest traffic generated by the development of parcels 1 and 2.

The elimination of the perimeter road would now undo everything our planners did and foist upon this community the unwelcome reality of the original Area 13 plan. Yes, Ridge Road, Northway, Southway, and possibly Crescent would have to be widened to four lanes, destroying the beauty of adjoining properties and scuttling Greenbelt's excellent safety record.

The board also ignored the supposedly obvious fact that Greenbelt itself is responsible for the county receiving $4½ million dollars from the Federal government to build this school. In other words, our citizenry is providing the county with approximately nine times as much money as the desired lake site would cost. Yet, the school board takes the peculiar position that their benefactors should have no voice in where this money is spent.

Chairman W. Carroll Beatty of the school board never did answer Elaine Skolnik's question as to whether the board had fully calculated all costs associated with developing the respective school sites. Board member Thomas Hicks never did answer questions as to how the elimination of a perimeter road would affect the core of Greenbelt. The evasive answers can only lead one to the conclusion that such vital aspects were never really considered.

Must we cannibalize original Greenbelt to spawn unwieldy, unplanned, and unwanted development, solely for the convenience and profit of the developer?

If condemnation proceedings on the lake site had to be postponed last year because Bresler was busy on legislative matters, why could he find time in January to appear in person to persuade the school board to back the destruction of Greenbelt as a planned community?

These and other pertinent questions are begging for answers in a community of voters puzzled by a rampant disregard of everything they stand for.

Clifford Simonsen

PLAINTIFF'S EXHIBIT 4

GREENBELT NEWS REVIEW

Volume 29, Number 20 Thursday, April 7, 1966

Bresler Repudiates Covenant Signed With City In 1962

by Elaine Skolnik

City officials recently learned that developer Charles Bresler considers null and void the 1962 covenants between himself and the city of Greenbelt restricting the density of the 50-acre Charlestowne Village tract north of Greenbelt Rd. and southeast of Greenbelt Lake.

Under these 1962 covenants Bresler agreed (1) to keep the density down to 7 units per acres; (2) to keep construction in conformity with R-30 zoning (no high-rise apartments), a classification that did not then exist but was expected soon to be adopted, and (3) to deed 3.3 acres at the bay of the lake to the city for parkland. In return, the city agreed to R-18 apartment zoning.

Two years later on June 2, 1964, a "Release of Covenants" was filed with the court by Charles and Fleur Bresler and Suburban Trust Co., (holders of the mortgage) declaring the covenants inoperative. The reason given was that the mortgage holder had failed to sign the covenants which had been recorded on August 6, 1962.

News of this action came as a complete surprise to city officials since Bresler had not at any time during the past 22 months notified the city that he had unilaterally abolished the covenant agreement. As recently as May 17, 1965, in an appearance before the city council, Bresler denied reports that he was planning a 490-unit development in Charlestowne Village in violation of covenants limiting the development to 350 units. At that meeting he also stated that he would deed the 3.3 acres to the city within four or five months. The city has not yet received the land.

It was not until the city sought injunctive relief as a result of Bresler's clearing land behind Charlestowne pool (preparatory to erecting an 8-story apartment building) that the city learned of Bresler's action in voiding the covenants.

This unilateral declaration by Bresler in 1964 apparently preceded a transfer of ownership of 25 undeveloped acres of the Charlestowne Village tract. These 25 acres were foreclosed by Suburban Trust and then sold to Lunar Corp. and later to Twentieth Century Investments, the present owners. The remaining 25 acres are still owned by Bresler.

If the 50-acre tract is permitted to be developed under R-18 zoning without covenants, a total of 1,050 units instead of 350 units could be constructed. R-18 zoning permits a density of 21 units per acres.

The city is now looking into the legality of the "Release of Covenants" filed by Bresler since it was not a party to the document.

PLAINTIFF'S EXHIBIT 5

GREENBELT NEWS REVIEW

Volume 29, Number 26 Thursday, May 19, 1966

Startled At Bresler

To the Editor:

I wonder if the rest of Greenbelt's residents were as startled as I was to read in Sunday's Washington papers of Spiro T. Agnew's invitation to Charles Bresler to run as the Republicans candidate for State Comptroller?

The article in the Star made mention of Mr. Bresler's recent land dealings for the State. I wonder how much is known of his land dealings against this city?

Mrs. E. S. Ross

PLAINTIFF'S EXHIBIT 6

Volume 29, Number 29 Thursday, June 9, 1966

Charles Bresler to Run For State Comptroller

According to the *Evening Star*, Del. Charles S. Bresler, R-Montgomery, will announce his candidacy for Maryland State Comptroller on the Republican ticket this Saturday, June 11.

Bresler, a real estate developer and builder, owns most of the remaining vacant land in Greenbelt. He developed the Plaza Apartments, Lakecrest Homes and Charlestowne Village, and was the original developer of Boxwood Village.

Bresler is currently faced with a series of legal actions instituted by the City of Greenbelt. A bill of complaint was filed two months ago when Bresler allegedly violated the August 1962 covenants restricting the density of the 50-acre Charlestowne Village tract to 7 units per acre. Bresler filed such a covenant in the land records of Prince Georges County in exchange for city support in getting the land rezoned for apartment development (R-18) from its then rural-planned-community status. Two years later on June 2, 1964, Bresler unilaterally declared the covenants inoperative in a document filed with the courts.

A bill of complaint for specific performance has also been instituted by the city against Bresler for his failure to deed to the city 3.33 acres of the Charlestowne tract to serve as public parkland. The deeding of the land was promised within two years of the agreement recorded in August 1962.

The city's decision to institute legal proceedings followed disclosures that Bresler had secured a permit on December 30, 1965, for the construction of an 8-story apartment building on part of the

land. This action violates the covenants in which Bresler also agreed to keep construction in conformity with R-30 zoning—a category which prohibits high-rise apartments. Further, construction of such a building would make it impossible for the 3.33 acres to be dedicated without making the number of units on the remaining land in excess of those allowed by the zoning requirements.

The city also resorted to legal action early in the construction of Boxwood Village because drainage problems in the development caused damages in the Lakewood subdivision. In addition, an agreement to give the city open space in Boxwood has not as yet been consummated. In other action, the city is in the process of condemning parcel 11, owned by Bresler, for parkland, as approved overwhelmingly by the Greenbelt electorate at the last election to purchase this and adjoining acreage adjacent to Greenbelt Lake. In April, Bresler filed a zoning petition for a special exception to construct a private hospital on parcel 11.

Reportedly, a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards.

Bresler is the landowner involved in the senior high school controversy. Last year he attempted to get the city council to support apartment zoning for his remaining vacant land in exchange for agreeing to the placing of a senior high school on Parcel 15, the site designated in the adopted Greenbelt Master Plan and the Maryland National Capital Parks and Planning Commission. This was the originally approved site of the Board of Education. When the city refused, Bresler then suggested that the Board of Education accept an alternative site which the city considered unacceptable from the standpoint of traffic accessibility, pedestrian safety and scenic location.

PLAINTIFF'S EXHIBIT 7

GREENBELT NEWS REVIEW

Volume 29, Number 32 Thursday, June 30, 1966

GHI FILES SUIT AGAINST SCHOOL BOARD; BRESLER INFLUENCE CITED

The Prince Georges County Board of Education, in a suit filed on June 27 by Greenbelt Homes, Inc., has been charged with acting arbitrarily, capriciously and in breach of its trust as a public body in selecting a Greenbelt senior high school site. The site chosen by the school board — parcel 2 (land between the Baltimore-

Washington Parkway and GHI property) — has been bitterly contested by the Greenbelt city council and local civic groups since its selection.

The use of this site, according to the 1,500-membership housing corporation (GHI), "will require widening of roads in residential areas not intended for such traffic and will result in the irreparable destruction and impairment of valuable property rights."

The bill of complaint for injunction, filed by GHI's special attorney, David Reich, stated that in reversing its decision to buy parcel 15 (the city-preferred Beltway-Lake site), the school board was influenced by considerations other than the public interest and by the pressures and influence which the developers (Charles Bresler, Theodore Lerner, and associates) were able to assert by reason of their ownership of both sites (parcels 2 and 15).

The school board has till July 20 to reply.

This legal action, which was joined by individual citizens, culminates a controversy which had its beginning in the fall of 1964, when the school board opened talks with the city regarding the relative merits of various sites for a senior high school.

Charges in Lawsuit

At that time, the City of Greenbelt was, according to the suit, "in the process of adopting a Master Plan for the development of the city consistent with the ideals, concepts, and vision of the President and Congress of the United States in the establishment in 1935 of the planned community of (Greenbelt)."

The suit went on: "In the Master Plan the proposed high school for the City of Greenbelt was recommended for placement on parcel 15 by reason of its location, the availability of established roads, its separation from the residential district proper with consequent less adverse effect on traffic congestion and pedestrian safety, and its proximity to existing park and other recreational facilities."

The Maryland National Capital Park and Planning Commission subsequently made the same recommendation with respect to parcel 15 in its Area 13 plan for the College Park-Greenbelt area.

In November 1964, the suit continued, the school board directed Mr. Thomas S. Gwynn, Assistant Superintendent of Schools, to negotiate with Bresler-Lerner for parcel 15. Unable to negotiate successfully, the school board instituted condemnation proceedings in December 1964 for the parcel 15 land.

Bresler-Lerner Proposals

These condemnation petitions, however, were never tried. Instead, according to the suit, Bresler-Lerner proposd to the school board to agree upon a price for parcel 15 "in lieu of condemnation award by the court . . . if Bresler-Lerner were assured by the city of Greenbelt that the city would raise no objection to Bresler-Lerner's application for denser zoning in parcels 1 and 2 than the Master Plan adopted by the city authorized."

At the specific request of Mr. Gwynn, meetings were held by members of the City Council with Bresler-Lerner to listen to their proposal. On October 18, 1965, the Greenbelt City Council went on record rejecting Bresler-Lerner's proposal.

Bresler-Lerner next made a proposal to the school board to trans-

fer 55 acres in parcels 1 and 2 for a 3-school complex to include the senior high school. Bresler-Lerner, the suit said, offered to sell one-half of the acreage and to donate the other half in a manner which would result in tax benefits to Bresler-Lerner.

Without notifying the Greenbelt City Council, the school board accepted this proposal on November 30, 1965. The city and GHI protested this action, urged continuation of condemnation proceedings, and, the suit recounted, "in addition made good faith offers of parcels of land and money which (the school board) could use toward the purchase of Parcel 15."

In the subsequent months, Bresler-Lerner again proposed to agree on a price for the acreage situated in parcel 15 if, among other considerations, the City of Greenbelt would not object to Bresler-Lerner's requests for denser rezoning of parcels 1 and 2, the suit said. The City of Greenbelt and GHI would not accede to any such condition.

Subsequently, on March 24, 1966, the school board decided to purchase the parcel 2 site for the 3-school complex.

The chairman of the county school board is W. Carroll Beatty, who is a director of the Suburban Trust Company which has held the mortgages on much of Bresler's properties in Greenbelt. The county school board attorney is Paul Nussbaum, who is on the Suburban Trust Company's Advisory Committee.

Council Gets Report On Bresler Suits

For undisclosed reasons, city attorneys have decided not to seek a temporary injunction to prevent the construction of an 8-story high-rise apartment on the Charlestowne tract. The city has already filed suit against the developer, Charles Bresler, for a permanent injunction.

In the other city suit pending against Bresler for conveyance of 3.3 acres of parkland, a demurrer has been filed by Bresler's attorney, Abraham Chasanow. The demurrer states that the agreement for deeding of the land is "subversive of public policy" and invalid since the city exacted a gift of land in exchange for favoring a rezoning application. The demurrer also noted that the city did not seek relief promptly, as required by law.

At last Tuesday's special council meeting, the council voted unanimously to initiate a police investigation of the misplaced letter which the developer sent by registered mail last Christmas notifying the city of plans to construct a high-rise apartment. The city manager was also instructed to refer the matter to the postal authorities. City officials have not been able to locate the letter, which was signed for by an employee who no longer remembers the matter.

In other action, the council voted to restrict left-hand turns from Breezewood Drive to Edmonston Road during weekdays from 7 to 9 a.m. Council also passed a resolution declaring a need for acquisition of the parkland around Greenbelt Lake, by condemnation if necessary. Council took official cognizance of its new policy of no longer maintaining the service courts of Greenbelt Homes, Inc., by adopting a resolution. From now on, the city will only maintain off-street parking facilities located on formally dedicated public right-of-ways or city-owned property.

PLAINTIFF'S EXHIBIT 8

GREENBELT NEWS REVIEW

Volume 29, Number 22 Thursday, April 22, 1965

Citizens For A Planned Greenbelt Organize Citywide Membership Drive

by G. K. Hodenfield

Plans for a city-wide membership drive, designed to get all of Greenbelt activity involved in the Citizens for a Planned Greenbelt, were announced at a meeting of the CFPG steering committee Tuesday night. The drive will get underway May 1.

Charles F. Schwan Jr., chairman of the membership committee, outlined preliminary plans for a door-to-door solicitation. Those desiring to jump the gun may mail their contribution to P.O. Box 128, Greenbelt, and a membership card will be sent them by return mail.

Each Greenbelt family will be asked to contribute $1 to finance CFPG activities.

Those activities were set forth last Thursday by CFPG Chairman Lloyd Moore in a letter to each of the five County Commissioners.

Seek Meetings

Moore asked an audience with the County Commissioners for an exchange of views about general plans for the future growth and development of Greenbelt. No specific zoning cases would be discussed. He asked specifically for the Commissioners to meet with 6 or 7 members of CFPG's Steering Committee, and further asked that the County Comissioners set suitable times and places for the meetings.

Moore told the Commissioners that the goals of CFPG are "to preserve the fundamental character of Greenbelt as a low-density, planned residential community" and to insure that its future growth and development are in accord with the sentiments of more than 1,000 Greenbelters who appeared at the preliminary hearing on Master Plan 13 North last July, the official goals of the City of Greenbelt, and the Greenbelt Master Plan.

CFPG's program of activity, Moore told the commissioners, includes maintaining constant contact with, and soliciting the support of, elected and appointed officials in the county, state and federal governments, providing citizen representation at all hearings affecting the development of Greenbelt, and taking legal action when required.

Moore said he was asking for the meeting with the Commissioners in accordance with that program of activity and also with "the right to petition elected representatives for redress of grievances."

Public Invited

The Steering Committee, in another move to achieve the widest possible community participation in CFPG affairs, also renewed its invitation to the public to attend its meetings.

The next meeting has been scheduled for 8 p.m. Tuesday, April 27 in the Municipal Building. By that time, it is hoped, some definitive reply may have been received from the County Commissioners.

City Battles Bresler on 2 Fronts; Sets Spring Clean-up for May 3-17

by Al Skolnik

Another confrontation is looming between the city council and the local developer, Charles Bresler and associates. At last Monday's council meeting, it was disclosed that a subdivision plat for section 2 of Charlestowne Village was filed with Maryland National Capital Park and Planning Commission (MNCPPC). This plat calls for 260 units in excess of the number agreed upon in the covenant entered into between the city and Bresler at the time the land was rezoned.

According to the city's interpretation, the covenant restricts the density of the 50-acre tract to 7 units per acre or a total of 350 units. (Actually this number is high, since the acreage was recently reduced by a 4-acre parcel rezoned for a nursing home.) Section 1 of Charlestowne Village now being constructed consists of 120 units, to which Bresler plans to add another 490 units.

The MNCPPC has approved the subdivision plat, since it only looks at the zoning of the land and does not take into consideration private agreements between municipalities and developers.

The city council reacted immediately to the news, instructing its city manager and city solicitor to take all the legal measures necessary to prevent the developer from building according to the plat filed with MNCPPC.

The council was also disturbed that Bresler failed to notify the city of his plans, as required according to the covenant. Instead, the city only learned about the subdivision plat when MNCPPC notified it that the plat was approved.

The council approved a motion requesting that MNCPPC notify the city immediately when a subdivision plat is filed so that the city would have an opportunity to bring to the attention of MNCPPC any relevent facts.

Court Suit

The city and Bresler will also be at odds this week when the suit filed by the city against Ivy Homes, Inc. and Boxwood Village, Inc. comes before the circuit court. At issue is the rain water runoff from the latter properties onto Empire Place in the Lakewood development. The city contends that the developers by rough-grading the land and removing trees, shrubs and grass has produced excessive rain water running off Boxwood Village properties into Empire Place. The developer had been repeatedly asked to rectify the situation but to no avail.

Complaints

Further disillusionment of the community with the developer was seen at the council meeting when new residents of Lakeside Extended complained that the developer

was not removing unsightly debris accumulated from building operations.

Spring Improvements

In keeping with the spring season, the city council approved a series of housecleaning and improvement projects. By a 4 to 1 vote, it authorized $800 for purchase of plans renovating the Center Mall. Councilman Lewis Bernstein objected on the grounds that priority should be given to determining how the renovation project, which could run into thousands of dollars, would be financed.

It approved the construction of an additional wall at the west end of the Municipal Building to screen the air conditioning equipment ($100), and a plan for illuminating by floodlights the entire front of the building ($255).

Also appropriated was $2,000 to pay for appraisal of vacant land in the vicinity of Greenbelt Lake for purposes of considering acquisition. Another $115 was approved for purchase of a fingerprint cabinet for the police department.

Other Matters

The council proclaimed May 3-17 as Clean Up - Fix Up - Paint Up weeks. Administrative Aide Ronnie Dick was named coordinator . . . City employees will have their 30-day-a-year annual leave accumulated on a calendar-year basis, instead of fiscal year. . . . Officer David M. Brunk was complimented for his courtesy in a letter received by a person he ticketed.

PLAINTIFF'S EXHIBIT 11

GREENBELT NEWS REVIEW

Volume 29, Number 30 Thursday, June 16, 1966

Greenbelt Loses First Round On Bresler's 1962 Covenants

by Al Skolnik

Local land developers have won the first skirmish against the city in the latter's effort to prevent the high-density development of the 50-acre Charlestowne Village tract.

On Friday, June 3, Circuit Court Judge Roscoe Parker granted the Twentieth Century Investments, Inc. (Theodore Lerner and associates), current owner of 25 acres of Charlestown Village, a motion for summary judgment, dismissing the city's suit. The court supported the position of T. Hammond Welsh, attorney for Lerner, that Twentieth Century is not bound by the 1962 covenants

signed by Charles Bresler (when he owned the land), on grounds that foreclosure on the 25 acres effectively destroyed the covenants.

The 25 acres involved (Parcels D, E, and F) were foreclosed by Suburban Trust Company and then sold to Lunar Development Co., Inc. in September 1965. Subsequently, in October 1965 the land was purchased by Twentieth Century with Bresler as the real estate broker for the sale, according to city solicitor Thomas Brooks.

The covenants signed by Bresler agreed to restrict the density of the entire 50-acre Charlestowne Village tract to 7 units per acre for a total of 350 units. Lerner is planning 500 garden-type apartment units on his 25 acres located behind the National Guard Armory and the 6-14 courts of Ridge. Construction is to begin in several weeks, as the land is now being cleared.

Bresler still owns the remaining 25 acres of Charlestowne Village. In the city's amended suit against Bresler's construction of a high-rise 179-unit apartment, Abraham Chasanow, attorney for Bresler, has filed a demurrer, admitting the facts but maintaining that there were certain omissions of facts.

Chasanow has also filed a demurrer with respect to the city's bill of complaint for specific performance against Bresler for his failure to deed to the city 3.33 acres of the Charlestowne Village tract to serve as public parkland. One of the contentions of the demurrer was that the suit was in the name of the wrong party.

Citizen Discontent

Citizen discontent with the conduct of the city's case was evident at last Monday's council meeting. A representative of Citizens for a Planned Greenbelt (CFPG) wanted to know why depositions were not taken from all the parties involved, including officials of Lunar and Bresler. City solicitor Brooks had taken depositions only from Theodore Lerner and his brother relating to the purchase of the land by Twentieth Century. It is CFPG's contention that the city's case may hinge more on whether or not Lunar was a bona fide corporation and whether the foreclosure sale was bona fide or merely an attempt to destroy the covenant.

Mayor Edgar Smith said that the council instructed Brooks to take deposition from all involved, but councilman Dave Champion said that this was not his understanding.

City manager James K. Giese defended Brooks by quoting his previously - prepared statement to council that it was Brooks' belief that Twentieth Century was a bona fide corporation and that its purchase of 25 acres of Charlestowne Village is bona fide. Giese was asked whether the city's new co-counsel, Joseph DePaul, agreed with Brooks, and Giese said that DePaul has seen the file.

CFPG treasurer Harvey Geller expressed concern over the delays encountered in the case. The city, he said, knew of the high-rise construction and of the alleged violation of the covenants in January, yet Brooks did not file a bill of complaint until late March.

Mayor Smith said that there have been obvious failures of communication. He complained that he had not seen the city's brief in the case, had not been kept up-to-date on the status of the court case (when it went before the judge, etc.), and did not learn of construction plans for 500 units on Charles-

towne Village until informed by a New Review reporter.

A member of the audience asked whether this was not the job of the city manager — to keep council properly informed. Councilman Dick Pilski said that "all we have been fed is bits and pieces. We need to get the whole picture." He was joined in these sentiments by Councilman Bill Hoff who asked for an immediate meeting with both attorneys to map out a coordinated plan of action. Giese was instructed to set up a meeting for last night, Wednesday, June 15. He pointed out that Brooks could not be present, however, but that he would inform DePaul.

Giese was asked whether the city had received the Lerner subdivision building plats which would show the layout of the roads and the swimming pool. He said that they will come to the city in due course. Smith thought it advisable that Giese make an immediate effort to get copies of the plats. "We want to know everything and much sooner," he said.

A resident of Boxwood Village asked whether participation of a third attorney hired by citizens would be desirable. CFPG is now engaged in soliciting for a legal fund to help defray the cost of suits by private citizens against the developers. Geller said that a separate citizens' suit would supplement the citys case by using approaches that may not be open to the city, and Smith agreed.

CFPG Drive Launched

In conjunction with its annual membership drive, the Steering Committee of the Citizens for a Planned Greenbelt will assist in the collection of funds earmarked specifically for legal fees. Citizen suits are now being prepared in connection with an 8-story high-rise apartment on Charlestowne-Village acreage and other actions of developers which are contrary to the Greenbelt Master Plan.

Harold Siegal, CFPG chairman said, "Protecting the community interest by supporting legal action is one of the functions of CFPG. The CFPG was formed in the spring of 1965 to preserve the fundamental character of Greenbelt as a low-density planned residential community, and to insure that the future growth and development of the City should be in accord with the Greenbelt Master Plan."

The kick-off for the combined fund-raising membership drive will be this weekend — on Friday evening and all day on Saturday at the Greenbelt Center Mall.

To carry out its current drive, CFPG needs the assistance of all Greenbelters. There are telephone calls to be made and neighbors to visit. The amount of time spent, whether it be five minutes or five hours, will help Greenbelt in its fight. Call 474-6666, 474-6323, or 474-6060.

PLAINTIFF'S EXHIBIT 22

GREENBELT NEWS REVIEW

Volume 28, Number 24 Thursday, May 7, 1964

Council and Audience Debate Restoration of Lake Shoreline

by Al Skolnik

Spring came to the city council last Monday, with everyone proclaiming their love of nature. Unfortunately, this love apparently did not extend to their fellow-beings, if one could judge by the course of the debate that took place after councilman Cliff Simonson introduced a motion to have the city initiate a reforestation program for the area along Greenbelt Lake.

The debate, in which the audience participated freely, ranged all over the field and included varied and sometimes irrelevant charges such as that the council was interested in punitive, not constructive, action, that the council was Bresler-owned, and that no one can tell an agricultural expert without a scorecard.

Everyone recognized the problem, as presented by Simonson, that there had been some encroachment by Lakeside property owners and others on the city-owned land surrounding the lake. This encroachment had in a few instances taken the form of tree-cutting and extension of a cultivated shoreline. Simonson deplored this on the grounds that nature-lovers, not knowing where the city boundaries ended, were dissuaded from frequenting the trails along the lake. Simonson also observed that much debris had been left along the shoreline, including a spreading patch of tar-oil, as the result of the construction of Lakeside Extended by the developer Charles Bresler.

The discussion however soon deteriorated into a question of whether property-owners who had knowingly or unknowingly encroached on city property should be liable for any expenses involved in restoring the lake front. This soon deteriorated further into a discussion of whether the lake front was better or worse off for this encroachment which in some cases has produced a "cultivated" and, in the eyes of some, an attractive shoreline. The final collapse came when a question came up as to whether an oral statement by an agricultural expert as to the merits of the reforestation program should carry less weight than a written statement.

Decision Reached

It took the better part of two hours before the council and the audience decided that it made much more sense to stop attacking each other and concentrate on a common target — Bresler — who wasn't there. The council rapidly agreed, with the full approval of a tired audience, to get off a letter to Bresler notifying him that unless all material and debris now encroaching upon city land is removed within a specified time, the city

will remove the debris at the developer's expense. Councilman Dave Champion dissented on the grounds that the city has already received assurances from Bresler that this would be done. The council and audience remained skeptical.

The council also agreed to a program of demarcating all pathways and rights-of-way to the city property along the lake shore...

Oh, what about the reforestation program? Mayor Edgar Smith said that only one piece of property was involved in any substantial cutting down of city-owned trees and the property owners have offered to cooperate in planting new trees.

PLAINTIFF'S EXHIBIT 23

Greenbelt News Review

Vol. 26 No. 19 Thursday, April 12, 1962.

Bresler, Council Set Town House Covenants

By AL SKOLNIK

Terms of the covenants governing the use of the 50-acre tract to be developed by Charles Bresler for town houses were worked out by the builder and the city council at a special meeting last Monday night. The covenants call for a density of not more than 7 dwelling units per acre on the tract, which is located behind the 10 court Southway and 6-14 courts of Ridge. Also provided is dedication of land near the lake for park and recreational purposes.

The council had previously indicated that it would not support Bresler's application for a R-18 zoning normally for apartments unless these covenants were signed. The application is coming up before the county commissioners on Wednesday, April 18. The council will act formally on the Bresler Proposal at the regular meeting next Monday night.

A R-18 zoning without restrictions would permit construction of apartments, but this is now precluded by the convenant. Bresler's plans call for construction of 350 town houses of diversified exteriors which he hopes to market under a "condominium" arrangement which would provide for joint ownership of open green areas but individual title to each unit.

There is some question whether county building and zoning regulations will permit such arrangements. In order to facilitate "condominiums" state legislation as well as a new zoning classification -- R-30 -- have been proposed. If "condominium" is not permitted, then Bresler will be required either to rent his town houses or construct free-standing homes. The city council is generally receptive to the Bresler plan, since it is in keeping with the original "garden type" construction of Greenbelt.

The townhouse type of construction planned by Bresler calls for buildings of four, five, six or seven units grouped around a center square, each unit selling from $15,000 to $25,000. Entrances to the project will be through Lakeside Drive and through the half circle on Greenbelt Rd. between Legion Hall and the Armory.

LAKESIDE EXTENSION

Plans for the grading of the extension of Lakeside Drive also to be developed by Bresler, have been presented to the city for council approval. In the meantime, bids are already being received for the grading of Lakeside and the various cul-de-sacs, similar to Lakeside Circle, which will be part of the planned development. About 65 individual homes, in the $28,000 to $50,000 class are planned.

Architects' drawings of house designs for the brick or part-brick, part-frame homes are now available. These show four basic designs, with numerous variations. Included are a rambler, a split-level, and a rambler with full basement above ground level --suitable for hillside terrain.

Work on the first group of homes will begin as soon as sewage lines and water mains are in. It is hoped that they will be completed by December.

PLAINTIFF'S EXHIBIT 24

GREENBELT NEWS REVIEW

Volume 29, Number 51 Thursday, November 11, 1965

Board of Education Proposes Change in High School Site

by Elaine Skolnik

The Prince Georges County Board of Education announced a sudden switch in plans for Greenbelt's new schools at last Tuesday's Board meeting, which was attended by Greenbelt councilmen and citizens.

Instead of seeking 32 acres adjacent to the Capital Beltway for a Greenbelt senior high school, the Board stated that it was going to seek a three-school complex of 55 acres in parcels 1 and 2 — the vacant land between Greenbelt Homes, Inc., property and the Baltimore-Washington Parkway.

A senior high school would be be placed on the south side of Northway extended (near the sanitary landfill); a junior high school north of Northway extended; and an elementary school on Hamilton rd. (near the GHI administration

offices). All the acreage is owned by Charles Bresler and associates.

The Board does not expect the same difficulties in acquiring these sites that it encountered in attempting to obtain the Beltway site near the American Legion, also owned by Bresler and associates.

William Kahler, attorney for Bresler, told the board that his client would be ready to sell the land at an average price of $8,000 an acre.

The appraised value of the Beltway site was more than $20,000 an acre. The owner has been resisting condemnation of this site for a high school.

Pilski Suggests Postponement

The action of the Board came as a surprise to Greenbelt representatives. At the suggestion of Councilman Dick Pilski, the Board agreed to postpone final action until Friday, Nov. 19, when the city would be invited to make its comments.

Councilman David Champion, speaking "on his own behalf," commented that he favored the Board's proposal.

The Board's new plan was presented orally, since no written reports were available. The plan had been recommended by its engineer, Mr. Robertson, who had conducted a special study within the last few weeks. Robertson stated that parcel 11 near the lake was too narrow a strip for a junior high school.

The site on parcels 1 and 2 had been considered originally as a school location, but had been discarded because of the impact on road traffic and other problems. In the absence of any new roadways, a senior high school on the Northway site would mean that all school buses and school traffic would have to be channeled through such two-lane streets as Ridge Road and Northway.

Without an overpass or interchange with the Baltimore-Washington Parkway, the senior high school would be backed up against the parkway, with all out-of-town students forced to negotiate Greenbelt roads to get to the school.

Board of Education officials at the meeting, however, said that little busing of students would be required, except from Springhill Lake. No further explanation was given as to how this would be accomplished.

Threaten to Sue CFPG

Attending the meeting was a delegation from the Citizens for a Planned Greenbelt (CFPG), led by Chairman Lloyd L. Moore, and city councilmen who had been seeking to expedite progress on the Beltway school site. Nine months ago the Board announced plans for acquiring this site, only to run into difficulties in reaching an agreement with the owner. City representatives and CFPG sought a meeting with the Board, after learning that the Beltway site condemnation suit would not be heard until April 7, 1966.

During the meeting, President W. Carroll Beatty of the Board expressed the board's irritation at a letter it had received from CFPG. He took exception to the following passage: "It is disturbing to us (CFPG) to know that the Board would, in any way, consider or indirectly assist the pressures of the developer to effect a "tie-in" deal on zoning of other property in order to expedite acquisition of the school site."

The passage referred to a proposal recently made by the owner of the Beltway site seeking council support for higher density of parcels 1 and 2 in exchange for uncontested consummation of the sale of the Beltway site to the Board of Education.

The Board asked CFPG to prove the allegation or withdraw it and apologize. Upon the motion of Mrs. Louise Yuill, the board authorized its attorney to institute suit against CFPG if a satisfactory reply was not received by November 30.

PLAINTIFF'S EXHIBIT 31

Board of Education of Prince George's County
Upper Marlboro, Maryland

March 10, 1966

The Honorable Edgar Smith
Mayor, City of Greenbelt
Greenbelt, Maryland

Dear Mayor Smith:

At the February 28 meeting of the Board of Education, Mr. Charles Bressler appeared before the Board stating that he had been in consultation with you and members of the City Council on the previous Saturday and that he had been requested by them to intercede on their behalf to encourage the School Board to place the proposed senior high school on the beltway site.

Mr. Bressler, on behalf of himself and his associates as owners of the expressway site and the beltway site, agreed to extend the option heretofore given to the Board of Education to acquire approximately 55 acres at the expressway site at an average price of $8000.00 per acre for a period of thirty days, during which time GHI would be requested to allow the staff of the School Board to select the ten acres that would be available for the elementary school site. In the meantime, GHI would determine the price for which the said land would be available and take the necessary legal actions to determine whether or not they could convey it to the Board of Education. At the same time, the School Board would determine once more the relative merits of the two locations, namely, that of building the school com-

plex at the expressway site or to accept Mr. Bressler's offer to make available ten acres at the expressway site at $8000.00 per acre, the City to convey five acres free-of-cost of the sanitary land fill as the proposed junior high school site, and to make arrangements to purchase the beltway site for the senior high school.

Following Mr. Bresler's presentation to the Board, Mr. Beatty summarized the offer submitted by Mr. Bressler as follows:

1. The Mayor and City Council would donate five acres of the sanitary land fill.

2. GHI would sell ten acres of their land at release cost, not to exceed $25,000.00 for an elementary site.

3. Mr. Bressler and associates would sell ten additional acres of land in the parkway site at $8000.00 per acre to be added to the City's donation of five acres in the sanitary land fill making a fifteen-acre junior high school site. Mr. Bressler would likewise sell 25 acres of the beltway site at $18,000.00 an acre for the senior high school site.

4. The Mayor and City Council of Greenbelt would purchase from Mr. Bressler and make available to the Board of Education five acres from park land to be a part of the senior high school site. In addition, Mr. Bressler agreed to give a right-of-way for a road into the senior high school site.

Further discussion with Mr. Bressler relative to the topography of the land which GHI might make available brought forth a remark from him that, if the land offered by GHI was unacceptable to the Board of Education, he would trade ten acres of his holdings which were acceptable for the ten acres of the ground offered by GHI.

In light of this statement, a resolution was passed deferring action on the acquisition of school sites in Greenbelt until March 30, 1966.

The first step taken following this procedure was initiated by Mr. Gwynn who telephoned Mr. Roy Brashears, an official of GHI, on March 2 requesting an appointment to examine the site proposed by GHI for their ten acres of land to be purchased by the board. Mr. Brashears informed Mr. Gwynn that the offer was no longer valid and that it would be useless to make the trip as the cost to the City (in terms of the density required by Mr. Bressler) was too great a concession to be made by the City.

Now we are at an impass. This Board has been accused both publicly and privately of not discussing with the appropriate officials alternative plans or sites for the proposed three schools in Greenbelt. The Board is most anxious to complete this transaction so that appropriate planning may proceed on these schools as their need may be indicated in the future. If any one of them were put immediately into a plan and design stage, it would be September 1967 before it would be available for occupancy and, in the case of the high school, it could be September 1968.

The Board has the responsibility of providing additional facilities for the children and youth of the county of which Greenbelt is a part. A decision cannot be postponed indefinitely. To do so will place upon all responsible officials, county and municipal alike, the burden for the lack of appropriate facilities at the time they are needed.

The Board is planning to meet again on March 24. I feel sure that they will proceed to act upon the offer which is still pending.

Sincerely yours,

/s/ William S. Schmidt
County Superintendent

PLAINTIFF'S EXHIBIT 32

CHARLES T. McDONALD
Consultant

January 25, 1966

Mr. Charles S. Bresler,
3318 Brooklawn Terrace,
Chevy Chase, Maryland

Dear Mr. Bresler:

The story in the recent Greenbelt News-Review in reference to the controversial 3.3 acre parkland in Charlestowne Village at the Lake, gives me much concern because I believe this land should be preserved as parkland.

I am also much concerned at the recent proposals at City Council meeting for the City to turn over to Board of Education some parkland to provide the supplementary land needed to build a High School in that area. Such a proposal by Council is certainly good cause for the Bresler interest to hesitate in conveying the 3.3 acre parkland strip to the City of Greenbelt if this strip or any other parkland in the City should be used for school purposes.

Recent City Council policy indicates that even the Municipal Service Building might be located on land purchased as parkland and with any such policy, how safe is the 3.3 acres from any Municipal use other than parkland once it is transferred to the City, should such a program become desirable to a large block of registered citizens not living in the immediate area, and with little or no consideration being given to the residents of Charlestown Village or the developers or owners of that property.

A very good example is the High School location controversy. As I recall the thinking of the interested parties, at the time of the agreement to transfer the 3.3 acre strip to the City, it was to assure the Charles-

towne area residents of some municipally maintained parkland in the immediate area of these proposed homes.

To accomplish the purpose of the covenant and still permit the developers to include as green area in the total acreage required for building construction under the present zoning, I suggest that consideration be given to the inclusion of the 3.3 acres under the County Scenic Easement Ordinance as a substitute for the covenant transfer. Such an arrangement should not only protect the interest of the residents of the immediate area and the intent of the covenant but also permit the land to remain in the ownership of the developers.

Sincerely yours,

/s/ Charles T. McDonald
28 Woodland Way
Greenbelt, Maryland

[PLAINTIFF'S EXHIBIT 33A]

	GHI	CFPG	News Review	Friend
Mr. Skolnik	V		V	
Elaine Skolnik	V	JC	V	V
Mrs. Bergman	Was	?	[redacted]	V
Gerd Gugk	V	V	Wife	V
Mrs. Ingrid Rogiti		SC Now		V
Charles Schwed	President	JC		V
Albert Herling	V	JC		V
Miss E.S. Ross		SC		A
Henry Fuller		JC		V
Hank Segal		President		V
Clay Simmons		SC		V
Dave Stern	V			V
Dorothy Sachs	Was	(SC)	V	V
Mrs. Lee Williams	Yes		V	V
Mary Smith	V	V	V	V
		V	V	V
Sidney Kastner	Was	V	V	V
		V	V	V

[PLAINTIFF'S EXHIBIT 33B]

MAYOR EDGAR SMITH	GHI ✓	CFPC ✓	NEGRO RELIEF	FRIEND ✓

DEFENDANTS' EXHIBIT 1

The Washington Post

SATURDAY, OCTOBER 6, 1962

Vast Private Developments Planned In 25-Year-Old Greenbelt Community

By John B. Willmann
Real Estate Editor

GREENBELT, the experimental planned community born 25 years ago during the New Deal, is on the verge of major growth as a similar but private enterprise greenspace concept of a 35-year-old Republican builder.

Charles S. Bresler, who was in his family's poultry business before he began building homes in the District, Montgomery County and Northern Virginia, acquired 450 Greenbelt acres for nearly $2 million from a Webb & Knapp subsidiary. Bresler is beginning the first group of 61 homes with partner Burton Reiner. However, total planning and zoning worked out with Greenbelt officials call for some 800 single-family dwellings and 350 town houses in the areas north and south of Greenbelt Lake.

"Our ambition," said the casually dynamic Bresler, "is to make the best utilization of new construction in relation to the original Greenbelt development that stressed trees, open green spaces, community services, protected walkways and comfortable living.

Greenbelt knows Bresler because he has been at work several years in the research, planning and purchase of the beautifully wooded tract that he is now ready to develop. Two years ago he built, and then sold, the 87-unit Green-

belt Apartments — a three-quarter-million-dollar project.

While making applications for zoning and planning concepts that would permit development of both single homes and town houses, Bresler worked closely with Greenbelt's Mayor Francis W. White and members of the town council.

Although most of the Greenbelt town officials are Democrats, the Republican builder-developer from Montgomery County worked out his plans with them on a nonpartisan basis. "This is strictly a business and community development operation," said Bresler. He is starting his Greenbelt development while embroiled in a campaign as a Republican candidate for the Maryland House of Delegates from Montgomery County.

According to the land plans created by the Werner-Dyer firm, there will be clusters of green space among the town houses. Also, areas and pathways near the lake will be preserved for public use. Single-family homes will be built on lots averaging 9000 square feet in an area originally zoned for 6500-foot lots. Streets will be curvilinear and will lead into cul de sacs.

"This will bring about a tremendous rebirth of Greenbelt," said lawyer-realtor Abe Chasanow, who has a business association in the new plans. Chasanow and his wife have lived in Greenbelt for 23 years, having recently vacated their "co-op" house for a fine private dwelling on a charming street of fine homes in the Greenbelt that chose not to leave.

There are now nearly 2000 row house and apartment living units in Greenbelt and more than a hundred residents are "plank owners" in the community that was called Tugwelltown when it was conceived as a New Deal experiment. More than 8000 persons live in Greenbelt today and nearly that many more would be added over the next several years by the developments planned by Bresler.

Meanwhile, Greenbelt will also grow with the development of Springhill Lake, a Community Builders' project on a 390-acre tract in the northwest section of the town. Ground was broken this summer for a planned community that eventually will be a $50-million development of town houses and high-and-low rise apartments totaling some 5000 living units.

Bresler plans to have his first section of single-family luxury homes, priced from $25,000, ready for sale on lakeside lots early in 1963. He has 225 more, priced from $20,000, on the boards for spring occupancy in an area where 10 acres has been donated for a school site.

Some of the first Springhill Lake units also will be ready for rental occupancy early next year.

While the new living units will be more expensive than the cooperatively owned, original Greenbelt town houses and apartments, some old Greenbelters welcome the new plans as a move toward attractive heterogeneity.

"Some of us have built our own $30,000-up homes right here and builder W. Evans Buchanan built and sold quickly more than a hundred homes (priced at about $16,000) a few years back," said a long-time

resident. "Many families outgrow the original Greenbelt homes but want to stay here. Now they will have a choice of new and more expensive rental units and large, new single-family homes."

While contemplating the growth of their community that had remained relatively stable in size for a quarter century, Greenbelt residents are anticipating the silver anniversary that the town has planned for later this month. Many top Federal officials and national personalities are expected to be on hand but the silver anniversary committee has been saddened by the illness that has forced Eleanor Roosevelt to cancel her Greenbelt visit planned for Oct. 23.

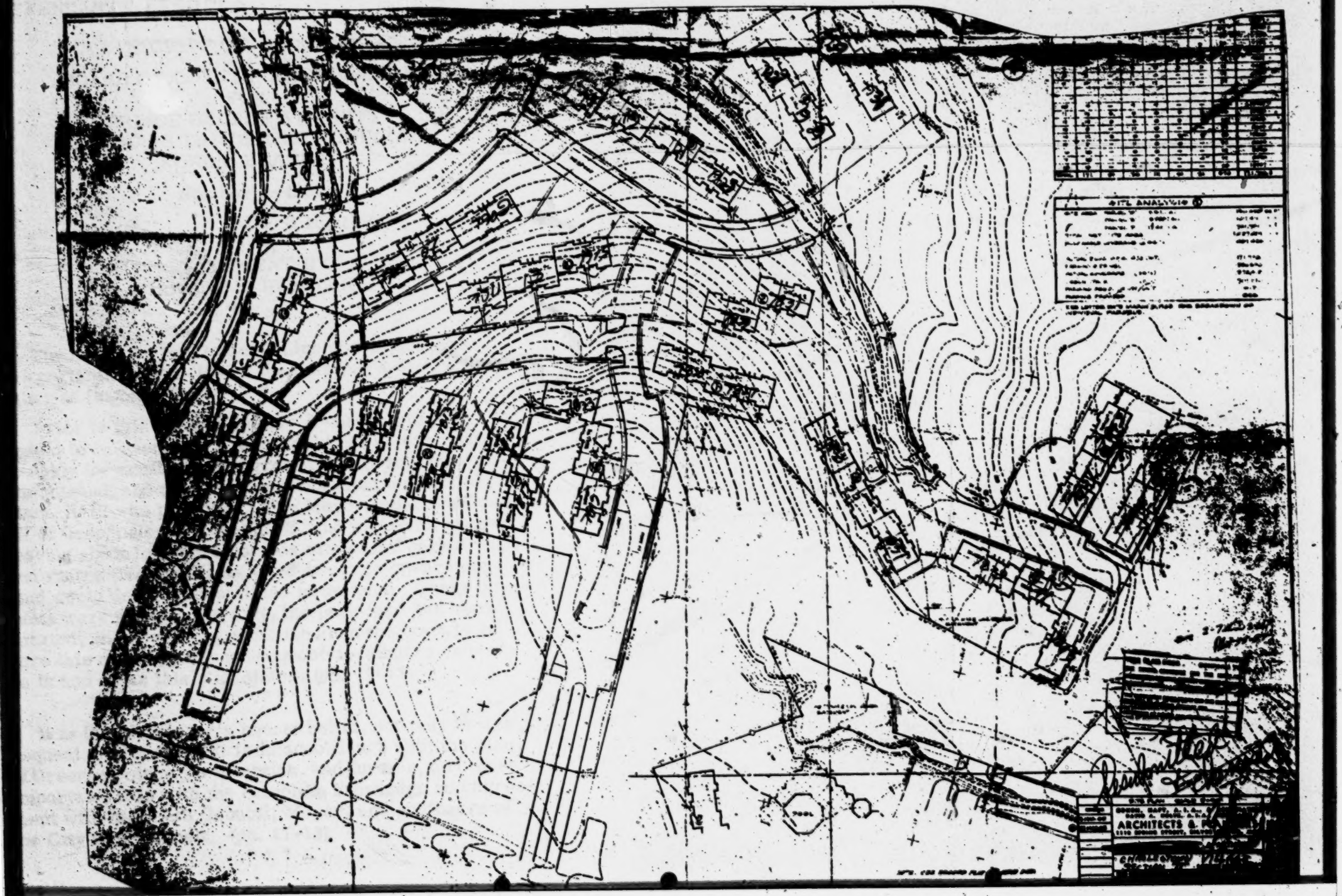
In 1952 the Greenbelt Veteran Housing Corp. purchased the Government-built homes and community facilities from the Public Housing Administration and the individual homes were subsequently sold to occupants for low down payments on long-term, 4 per cent mortgages. That purchase included 708 acres of vacant land. Originally, Greenbelt was built by the Federal Government to provide work for the unemployed and good dwellings in green surroundings for families of moderate incomes.

The success of the project envisioned by Rexford Guy Tugwell, a member of President Franklin D. Roosevelt's inner circle, can be measured by Republican Bresler's appraisal of the site 25 years later. He said that he is staking his future as a builder on the 450-acre site and the $20-million development on Greenbelt's:

- Fine reputation as a good place to live.
- Strategic location only 16 miles from downtown Washington and nearness of the Baltimore pkwy. and the new Beltway.
- Existing churches, schools and community facilities.
- Adjacency to the rapidly growing NASA headquarters and the large regional park to be developed by the Government.

Chances are that in another 10 years Greenbelt may be a community of nearly 30,000 persons in mostly privately built homes around a green heartland community that once was critically regarded a step toward socialism.

[DEFENDANTS' EXHIBIT 6]



DEFENDANTS' EXHIBIT 8

TRANSCRIPT OF PROCEEDINGS

BOARD OF COUNTY COMMISSIONERS
FOR
PRINCE GEORGE'S COUNTY
SITTING AS THE DISTRICT COUNCIL
ZONING HEARING

Number A-4200

April 18, 1962

STATEMENT BY
CHARLES S. BRESLER

* * *

The next step was to determine how to arrive at the particular plan. Under the existing R-P-C zoning, this was impossible.

Prior to this zoning, the new R-30 category was sought to be adopted. It then would not be necessary to apply for zoning of this ground. That not being accomplished, and the developer was most anxious to start, R-18 was proposed. The Mayor and Town Council of Greenbelt were consulted, and we compromised, leaving about four acres of this site to the park area, and restrictive covenants were drawn to ensure the land would develop as outlined in the plan. These covenants were given to the City; the park land has been donated, and covenants established on the tract to be sure this developer or subsequent developers can only go in and do as this plan states. (pp. 12-13)

* * *

It is this developer's honest belief, not only is this request justified, but it is in accordance with the plan of Greenbelt since its inception, and further, and most important, it is with the complete knowledge and agreement with the Town Council, Mayor, and engineers of the City of Greenbelt. (pp. 17-18)

* * *

COMMISSIONER REICHELT: I might say this: You have put forth a plan here and used pictures which are highly irregular in zoning procedures. We have never permitted this because we cannot tie you down to this. If it is granted for R-18 zoning, anything within an R-18 zoning category can go up there and there is no way of tying you down so that you will build precisely what you have set forth.

MR. BRESLER: I have been tied down, sir. (pp. 23-24)

* * *

MRS. LOWMAN: The one thing that we were concerned about was, what would prevent this being built up as apartments now or in the future?

Our understanding is after hearing your presentations this morning, our understanding has been that a city covenant would cover this. Am I correct?

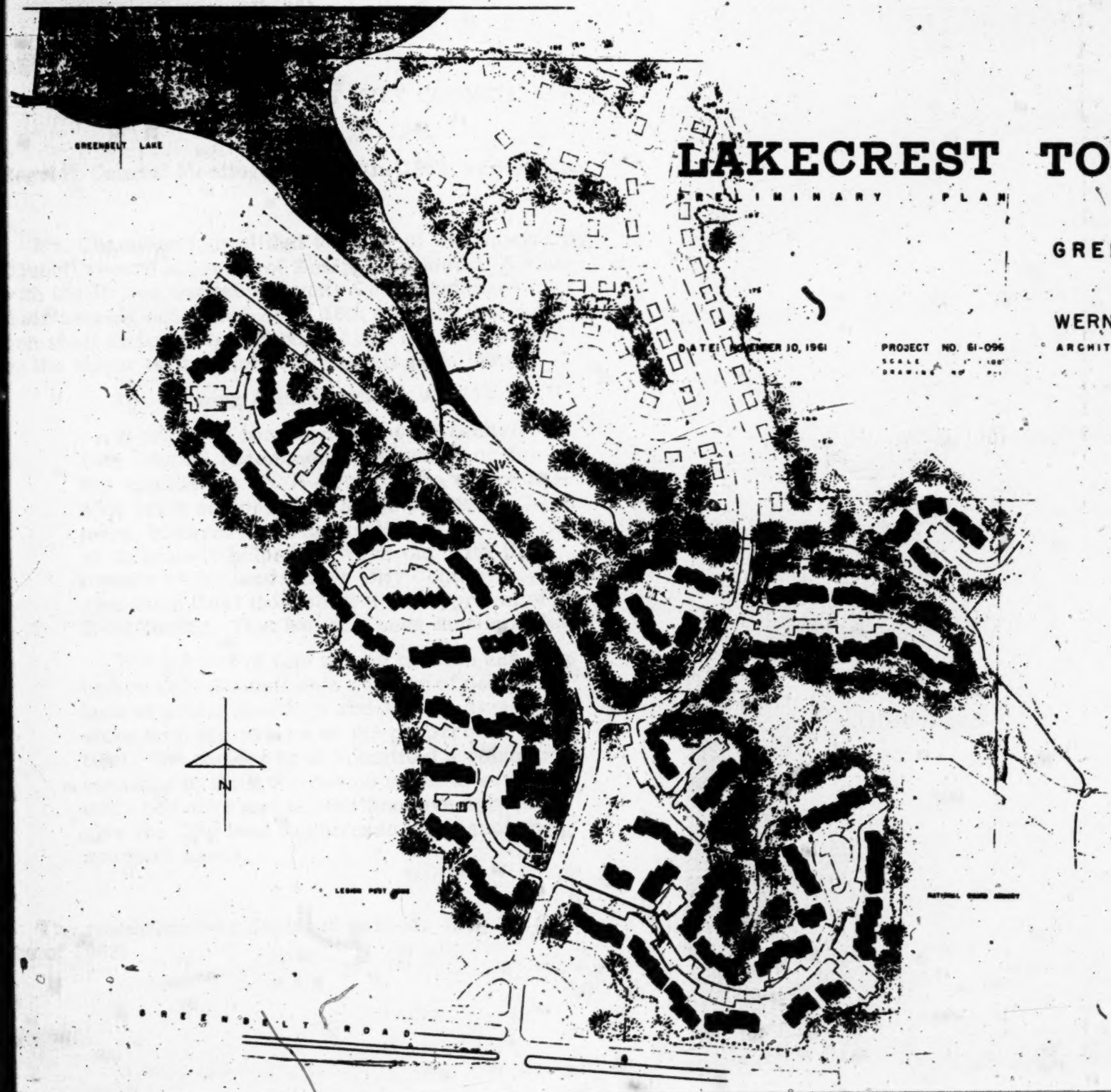
MR. BRESLER: Yes. Those covenants are in the hands of the City, now.

MRS. LOWMAN: This could not be sold by the present owner to a future owner and they, in turn, have apartments constructed on this site?

MR. BRESLER: That is correct. (pp. 32-33)

E. 249

DEFENDANTS' EXHIBIT 9



LAKECREST TOWNHOUSES

PRELIMINARY PLAN

GREENBELT, MARYLAND

WERNER - DYER + ASSOCIATES

ARCHITECTS - ENGINEERS - PLANNERS

DATE: NOVEMBER 10, 1961

PROJECT NO. 61-096

SCALE 1" = 100'

DRAWING NO P-1

DEFENDANTS' EXHIBIT 12

MINUTES OF GREENBELT CITY COUNCIL

April 16, 1962

Regular Council Meeting, April 16th, 1962, at 8:04 p.m.

* * *

Mr. Champion moved that the City of Greenbelt City Council record approval of Zoning Application A 4200 with the Prince George's County Commissioners for their hearing scheduled April 18th and that this motion shall embody a letter dated April 16, 1962, signed by the Mayor of the City of Greenbelt as follows:

Re : Zoning Application No. A 4200

In previous correspondence, Greenbelt City Council recommended approval of Zoning Application No. A-4200 for the entire 50.-4390 tract as described in the petition. There were, however, certain conditions that the City of Greenbelt helped to work out with the owners of the land before City Council would give their final indorsement for approval of R-18 Zoning. That has now been accomplished.

The subject of this zoning petition has been before City Council on a number of occasions both at public meetings and at executive sessions with the owners of the property in question. The owners have submitted a voluntary covenant to limit the development to seven units per acre and in addition have agreed to give the City land to increase its recreation and park areas.

* * *

The resolution was declared passed. (No. 16, Series of 1962)

* * *

Mr. Bresler thanked Council for their interest above and beyond normal function.

* * *

/s/ Francis W. White
Mayor

Attest:

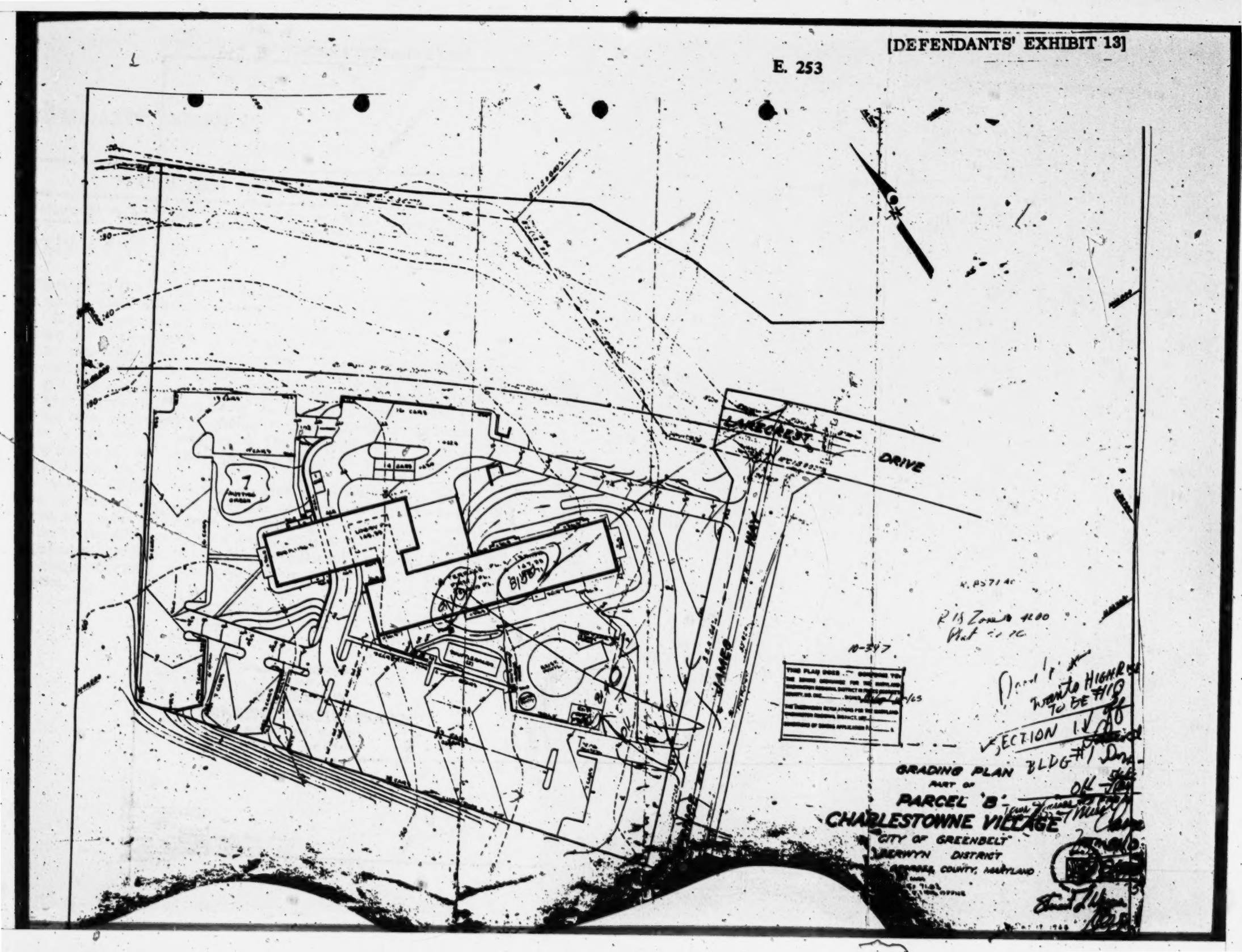
_____
ACTING CITY CLERK

Certified true and correct copy of pages of Minute Book #16 City of Greenbelt, Maryland.

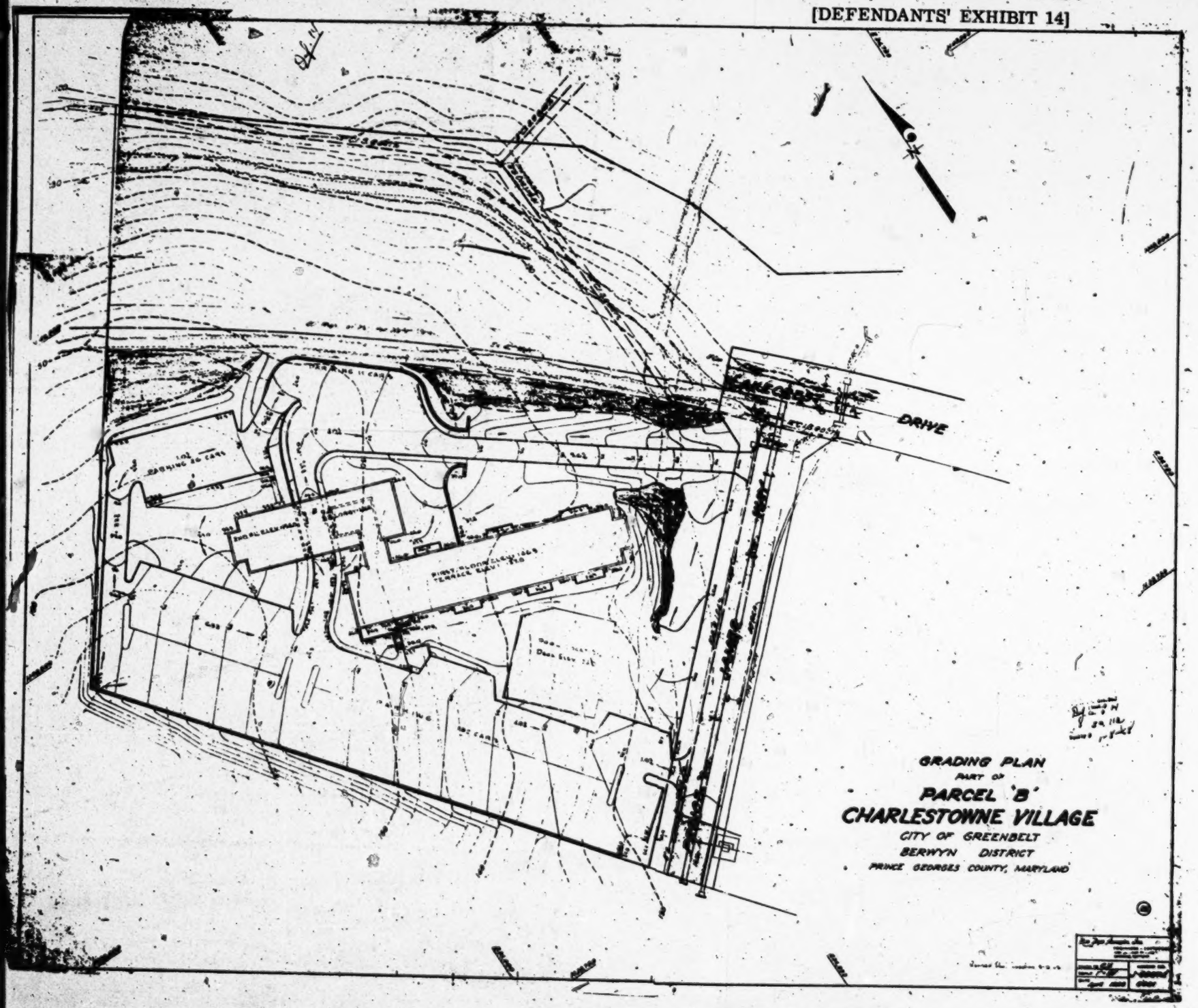
Nita P. Maschauer
City Clerk 12/28/67

[DEFENDANTS' EXHIBIT 13]

E. 253



[DEFENDANTS' EXHIBIT 14]



GRADING PLAN
PART OF
PARCEL 'B'
CHARLESTOWNE VILLAGE
CITY OF GREENBELT
BERWYN DISTRICT
PRINCE GEORGES COUNTY, MARYLAND

E. 255

DEFENDANTS' EXHIBIT 26

GREENBELT NEWS REVIEW

Volume 29, Number 29, Thursday, June 3, 1965

Hats Off!

Hats off to the 100 or so volunteers who are circulating petitions among their neighbors in support of the Greenbelt Master Plan. It is the sort of job that no one really relishes, yet it is a necessary job if Greenbelt's voice is to be heard.

And this voice sorely needs hearing. Take the latest action of the owner of the Golden Triangle, Milton E. Selig, in leveling the trees and denuding the land of all vegetation. This action was taken even before a decision as to the property's future development had been reached by the county zoning authorities. It bears witness to the disdain with which the Greenbelt concept of a planned community with ample parkland and green areas is viewed by some developers.

If anyone doubts that the community is seething at such actions, let him or her talk to those volunteers who have been knocking on doors. They have been getting almost 100 per cent response to the Citizens for a Planned Greenbelt (CFPG) drive for signatures in support of maintaining Greenbelt as a low-density residential community with spaciousness and minimum traffic congestion.

DEFENDANTS' EXHIBIT 27

GREENBELT NEWS REVIEW

Volume 29, Number 51 . Thursday, November 11, 1965

High Rise in the Park

They're burning the timber on the Jaeger tract. Soon what passes for progress around these parts will take its place. Another high-rise apartment complex will soar above Kenilworth Avenue, blanking out the uninterrupted view of forestlands in Greenbelt Park.

We can see it now—that first full-page ad in the real estate sections of the paper. Like another we saw recently, introducing a new luxury apartment building, we'll bet it will brag about a feature rare in the Washington area: "Every window with a spectacular outlook on the tree-tops in adjacent Greenbelt Park." Will there be a word about the zoning errors that led to this urban affront gouged out of a public park? Will there be a line about the toil, the petitions, about all those court and zoning hearings, and about the protests of countless citizens and officials who fought to preserve this stretch of land for parkland use?

In fact, to look into the future with unblinking gaze, we'll bet the ad writers won't even hint at what the view might be like from the tent sites in the park—the new America the Beautiful, brick walls and glass facades to blot out the setting sun.

DEFENDANTS' EXHIBIT 33

GREENBELT NEWS REVIEW

Volume 29, Number 25 Thursday, May 12, 1966

CFPG Membership Drive

The membership drive of the Citizens for a Planned Greenbelt (CFPG) is in full swing. Tables will be set up at the GHI meeting on Wednesday night and at key spots in the center on the following days to accept annual memberships.

CFPG is dedicated to preserve the fundamental character of Greenbelt as a low density planned residential community and to insure that the future growth and development of the city is in accord with the Greenbelt Master Plan.

In accordance with these goals, the CFPG steering committee is supporting the city council in its actions to uphold the validity of the covenants on the 50-acre Charlestowne Village tract which limit the density to 7 units per acre. It is also supporting the city in its efforts to get the promised 3.33 acres of parkland deeded to the city.

Charles Bresler and his wife, owners of the land when the covenants were recorded in 1962, unilaterally filed a "Release of Covenants" declaring the covenants inoperative on June 2, 1964.

CFPG has also gone on record against the special exception filed by Bresler to construct a private hospital on the lake parcel 11. This is the tract the city is in process of acquiring for parkland under the open spaces program of the Housing Act of 1961 as amended.

During the past year the CFPG steering committee appeared before the County Commissioners in support of the Greenbelt Master Plan and has conducted an active campaign to urge the County Board of Education to locate a senior high school on the Beltway-Lake site.

DEFENDANTS' EXHIBIT 34

GREENBELT NEWS REVIEW

Volume 29. Number 34 Thursday, July 8, 1965

First 100 Days Viewed With Pride By CFPG

At a joint meeting with city council, Lloyd Moore, chairman of the Citizens for a Planned Greenbelt (CFPG), presented a summary of the accomplishments of the group during the first 100 days of its existence.

Highlights mentioned were:

—Formulation of a set of goals aimed at preserving Greenbelt as a planned residential community.

—A membership drive which to date has secured 574 families as paid members and 2,100 names on petitions in support of the Greenbelt Master Plan.

—A meeting with the county commissioners in which CFPG presented its objections to the Area 13 plan and its support for the city's own master plan.

—Establishment of a solid citizen group with an active steering committee.

—Adoption of by-laws.

—Contact with citizen groups in adjacent areas for support of Greenbelt Master Plan.

—Keeping Greenbelt citizens informed of activities.

Forthcoming activities of the group will include a review of the status of the school construction program. Concern has been expressed over the apparent delay in acquiring a senior high school site. Board of Education plans announced last fall hopefully looked toward the opening of the school in September 1966.

At the next meeting of the Steering Committee on July 27, city manager Jim Giese will be asked to present the details of the land acquisition program for parks. A bond issue to finance the cost of this program will be voted on in a referendum at the time of the city election, September 21.

The committee agreed to schedule semi-monthly meetings—on July 25 and August 10 and 24.

DEFENDANTS' EXHIBIT 35

GREENBELT NEWS REVIEW

Volume 28, Number 25 Thursday, May 14, 1964

May 20 - Critical Hearing

We hope the city council will make a strong representation at the County Commissioners hearing on Wednesday, May 20, against the development of the 300 acres within Greenbelt's city boundaries east of the Baltimore-Washington Parkway for multiple family and high-rise apartments.

The Prince Georges County Planning Board has already recommended that the original petitions of the owners, Frank M. Ewing and Alfred H. Smith, for 105 acres of high-rise apartments and 179 acres for R-18 (multiple-family, low-density apartments) be reduced to 24 acres of high-rise or high-density apartments and 209 acres of R-18.

This is not good enough. Greenbelt does not need more multiple-family dwellings. Already the ratio of rental units to all units is 25 percent and rising each month as Sprnghill Lake Apartments open new sections.

A decision to develop the land immediately east of the Baltimore-Washington Parkway exclusively for apartments will also give a boost to the development of the remaining land in Greenbelt (such as the land between the GHI properties and the Baltimore-Washington Parkway) in the same direction.

The eventual result will be mroe than 80 percent of Greenbelt's population living in rental dwellings. Such an imbalance in the community will alter the whole character and nature of the community and its government. Leaving aside the concomitant problems that a high-density surburban community of 40,000 would have to cope with — traffic congestion, overcrowded schools, and loss of green spaces, we are concerned about the vitality of our local civic life. Will Greenbelt, with its heritage of citizen participation in local affairs, be the latest sacrifice to the megalopolis monster?

DEFENDANTS' EXHIBIT 36

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

Sitting as a Court of Equity

PATRICK F. BOYLE, JR., et ux

Plaintiffs

vs Equity No. C8570

BOXWOOD VILLAGE, INC., et al

Defendants

AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

STATE OF MARYLAND
ss:
COUNTY OF MONTGOMERY

CHARLES S. BRESSLER, being first duly sworn under oath says as follows:

1. That he is Vice President of Boxwood Village, Inc., a Maryland Corporation, and as such makes all final decision with regard to the sales of the houses it develops in the subdivision known as Boxwood Village, Greenbelt, Prince George's County, Maryland.

2. That on the 9th day of March, 1966, I was presented with a form contract signed by Patrick F. Boyle, Jr., and Margaret E. Boyle for the purchase of Lot 7, Block A, at Boxwood Village, but I refused to accept the same for the reason that the contract was contingent upon the Boyles' home being sold within sixty (60) days. The property in question was the last of its particular model and was almost ready for occupancy.

3. I authorized Mr. Randall B. Pratt, manager of Pleasant Corporation, to renegotiate a contract without said provision, but in that form was unacceptable to the Seller.

4. Affiant never subsequently received a revised offer for the purchase of said Lot.

5. Neither sales personnel nor management of Pleasant Corporation has any authority to enter into a contract for the sale of any of the houses owned by Boxwood Village, Inc.

6. Affiant has personal knowledge of the facts herein stated and is competent to testify thereto.

/s/ Charles S. Bressler

[Jurat]

[Certificate of Service]

DEFENDANTS' EXHIBIT 38

Greenbelt News Review

Vol. 26 No. 19 Thursday, January 25, 1962

Council OK's R-18 For 50-Acre Bresler Tract For 350 Units

by Sid Kastner

The proposed Bresler development, a suggested change in the Greenbelt boundaries, and default of payment of city taxes by a defunct drugstore, were the main topic of interest at Monday night's regular meeting of the city council.

On behalf of Bresler, Abraham Chasanow presented a copy of a proposed covenant to city solicitor, Ralph Powers. The covenant would provide that the development's average density be no higher than 7 dwelling units per acre, thus giving about 350 units on the roughly 50-acre tract. The zoning requested is R-30, which carries a a maximum limit of 12 1/2 units per acre. Some 11 acres immediately bordering the lake would be deeded to the city. Before construction is undertaken, the city would be consulted, Chasanow said. The covenant would expire after 20 years, except for the city's 11 acres which would be given in perpetuity.

Points questioned by the council were the use of the word "average," the change from the originally requested R-18 zoning to R-30, and the limitation to 20 years. The possibility that the open green areas would be built up in the future was discounted by Bresler; this point brought an explanation by Chasanow of the term "condominium" the legal expression for joint ownership of open green areas common to all residents. The change from R-18 to R-30 zoning was explained on the basis of a forthcoming general change in zoning classifications, although Bresler stated he would be willing to go back to R-18 zoning if the council so desired. Bresler also gave the reason for the 20 year limitation, as being the interest held in the development by the mortgage people involved.

Councilman Dave Champion proposed a motion for approval of the zoning change to R-18, with the covenant restrictions requested by council, such approval to be conditioned on:

(1) Approval by the city solicitor.

(2) Appropriate restrictions on the 11 acres next to the lake.

(3) Recording of the instrument (covenant) in a proper place.

If such conditions were not met, a letter denying approval

was to be sent to the County Commissioners prior to their meeting on zoning.

The last condition was removed upon mild objections by the lawyers present. And the motion was passed. The recommendation now goes to the Park and Planning Commission, which gives its own recommendation to the County Commissioners.

Powers was consulted on the question of possible recovery of unpaid city taxes from the defunct Greenbelt Pharmacy. He was not optimistic but agreed to find out what could be done.

Powers was also asked for his opinion concerning the chances of Greenbelt retaining the disputed land at the southwest corner of Edmonston and Greenbelt roads, overlapped by the claimed boundaries of both Greenbelt and Berwyn Heights. He felt that any law which contradicted a law previously existing was invalid insofar as the contradiction was concerned, and that by this principle Berwyn Heights appeared to have the valid claim since its law of 1943 preceded the Greenbelt law of 1949. However, if the original Federal law of 1937 explicitly laid out the boundary of Greenbelt it would take precedence, so that this earlier law was the one to examine.

Among other items taken up by council, Chasanow in the role of a private citizen requested a tax credit from the city to remedy a case of double taxation which had been imposed on him through faulty assessment. He also claimed his business area was not actually being cleaned by the city, so that he felt he should be exempt from the cleaning levy paid by the Center merchants. The council agreed to the first request, and arranged to provide for better cleaning service as an alternative to exemption.

[Filed Feb. 19, 1968]

ORDER FOR APPEAL BY GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., ET AL., DEFENDANTS

Mr. W. Waverly Webb, Clerk:

Please enter an Appeal to the Court of Appeals on behalf of Greenbelt Cooperative Publishing Association, Inc., and Alfred M. Skolnik, defendants, from the judgment entered in this action on January 24, 1968.

/s/ David M. Reich
8820 Burning Tree Road
Bethesda, Maryland

/s/ Roger A. Clark
1730 K Street, N.W.
Washington, D.C.

Attorneys for Defendants

Of Counsel:

ROYALL, KOEGEL, ROGERS & WELLS
1730 K Street, N.W., Washington, D.C.

E. 265

IN THE COURT OF APPEALS OF MARYLAND

No. 97

September Term, 1968

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., et al.

v.

CHARLES S. BRESLER

Hammond, C.J.
Marbury
Barnes
Finan
Singley,

JJ.

Opinion by Barnes, J.

Filed: May 2, 1969

This appeal involves a judgment, entered upon the verdict of a jury by the Circuit Court for Prince George's County (Mathias, J.) for $17,500 damages ($5,000 compensatory and $12,500 punitive) in favor of Charles S. Bresler, appellee and plaintiff below, for libel, against the appellants and defendants below, Greenbelt Cooperative Publishing Association, Inc. (Publishing Association) publisher of the Greenbelt News Review (News Review), and its president, Alfred M. Skolnik.

Inasmuch as the jury returned a verdict in favor of the plaintiff, Bresler, we must review the facts in the light most favorable to him, where those facts are in dispute or where more than one inference may be drawn from them. *Camp-*

field v. Crowther, 252 Md. 88, 249 A.2d 168 (1969); *Cassell v. Pfaifer,* 243 Md. 447, 453, 221 A.2d 668, 671 (1966). Accordingly, we note that there was sufficient evidence in the record from which the jury could have found the following facts: The News Review is the only newspaper published in the City of Greenbelt. Its circulation consists of approximately 4,500 copies each week, of which only about 75 are paid subscriptions which are mailed; the remaining copies are delivered without charge to every house in Greenbelt. Mr. Skolnik is not only president of the Publishing Association, but also writes many of its feature articles and editorials. He is also one of the five members of the editorial board which reviews and edits all of the material published. His wife, Elaine Skolnik, writes many of the feature articles as well as a weekly column and is one of several housewives who serve as reporters. The Skolniks are well-educated persons, Mr. Skolnik holding three degrees, B.A., M.A. and Ph.D., and Mrs. Skolnik having attended college for three and one-half years.

The News Review published a number of articles and editorials concerning Mr. Bresler which are alleged to be false, malicious and libelous. The two principal articles which used the word "blackmail" with reference to Mr. Bresler related to the proposed zoning of two tracts of land (Parcels 1 and 2) in which he owned a 16-1/3 per cent interest. Bresler and his associates had requested, and the Maryland National Capital Park and Planning Commission (MNCPPC) Master Plan had recommended R-30 (Townhouse) zoning for both tracts, but this zoning was vigorously opposed by Greenbelt Homes, Inc., the large mutual housing cooperative in Greenbelt, (GHI) and a group known as "Citizens for A Planned Greenbelt" (CFPG). CFPG had approximately 650 Greenbelt residents as members, and had no requirement for membership other than the payment of $1.00. Mrs. Skolnik is one of the twenty members of the Steering Committee of CFPG, which operates as its executive body. Both Mr. Skolnik and his wife, Elaine, attended meetings of the Steering Committee.

The Skolniks are also members of GHI by reason of having purchased the perpetual use of one of the original Greenbelt row houses. GHI at one time owned all of the land now owned by Bresler and his associates, but sold it at a profit instead of developing it. GHI owns the wooden row houses which sell for between $5,000 and $10,000 and which are located in front of Parcels 1 and 2. It opposed the R-30 zoning for Parcels 1 and 2, even though it was building townhouses on its own property. It advertises regularly in the News Review. Charles Schwan is president of GHI and is a friend of the Skolniks. He serves with Mrs. Skolnik on the CFPG Steering Committee and is chairman of the CFPG Membership Committee.

The evidence at the trial, which began on January 3, 1968, indicated that in 1961 and 1962 the relations between Bresler and the City Council of Greenbelt were cordial. A rather glowing article appeared in The Washington Post of October 6, 1962, by John B Willmann, its Real Estate Editor, under the headline "Vast Private Developments Planned In 25-Year-Old Greenbelt Community", in which the proposed activities of Mr. Bresler as a developer are set out in some detail. It was indicated that he had acquired 450 acres of land in Greenbelt for nearly $2,000,000, and with a partner was beginning the first group of 61 homes. The total planning and zoning, however, which had been worked out with the Greenbelt officials, called for some 800 single-family dwellings and 350 townhouses in the areas north and south of Greenbelt. "Two years ago," the article stated, Mr. Bresler had "built and then sold, the 87-unit Greenbelt Apartments—a three-quarter-million-dollar project." The article stated:

> "There are now nearly 2000 row house and apartment living units in Greenbelt and more than a hundred residents are 'plank owners' in the community that was called Tugwelltown when it was conceived as a New Deal experiment. More than 8000 persons live in Greenbelt today and nearly that many

more would be added over the next several years by the developments planned by Bresler.

"Meanwhile, Greenbelt, will also grow with the development of Springhill Lake, a Community Builders' project on a 390-acre tract in the northwest section of the town. Ground was broken this summer for a planned community that eventually will be a $50-million development of town houses and high-and-low rise apartments totaling some 5000 living units."

In 1964, however, the relations apparently had become somewhat strained inasmuch as in the News Review of May 7, 1964, in an article written by Mr. Skolnik reporting what had happened at the meeting of the City Council of Greenbelt on May 5, it was stated that Councilman Simonson "also observed that much debris had been left along the shoreline, including a spreading patch of tar-oil, as the result of the construction of Lakeside Extended by the developer Charles Bresler." Further discussion was then reported and the article continued:

"It took the better part of two hours before the council and the audience decided that it made much more sense to stop attacking each other and concentrate on a common target—Bresler—who wasn't there. The council rapidly agreed, with the full approval of a tired audience, to get off a letter to Bresler notifying him that unless all material and debris now encroaching upon city land is removed within a specified time, the city will remove the debris at the developer's expense. Councilman Dave Champion dissented on the grounds that the city has already received assurances from Bresler that this would be done. The council and audience remained skeptical."

On June 2, 1964, Mr. and Mrs. Bresler and the Suburban Trust Company, mortgagee, executed and recorded among the land records of Prince George's County, a release of covenants previously entered into with the City of Greenbelt in 1962. These covenants allegedly placed on the 50

acre Charlestowne Village Terrace a limitation of the density to 7 units an acre.

By April 22, 1965, as reported in the News Review of that date, an active campaign was in progress for membership in CFPG, the principal goal of which was "'to preserve the fundamental character of Greenbelt as a low-density, planned residential community.'" In an article by Mr. Skolnik in the same issue bearing the headline "CITY BATTLES BRESLER ON 2 FRONTS; SETS SPRING CLEAN-UP FOR MAY 3-17", it was stated that: "Another confrontation is looming between the city council and the local developer, Charles Bresler and associates." The article recites that a subdivision plat for section 2 of Charlestowne Village was filed with MNCPPC calling for 260 units "in excess of the number agreed upon in the covenant entered into between the city and Bresler at the time the land was rezoned." The article further stated the MNCPPC had approved the subdivision plat as it only looked to the zoning of the land and "does not take into consideration private agreements between municipalities and developers." It was further stated that the "city and Bresler will also be at odds this week when the suit filed by the city against Ivy Homes, Inc. and Boxwood Village, Inc. comes before the circuit court," involving an alleged excess of rain water resulting from the rough grading of the land. The article continued: "Further disillusionment of the community with the developer was seen at the council meeting when new residents of Lakeside Extended complained that the developer was not removing unsightly debris accumulated from building operations."

We now come to the two articles in the News Review which form the principal basis for the libel action.

In the News Review of October 14, 1965, the first article containing the following relevant portions appeared:

"SCHOOL SITE STIRS UP COUNCIL REZONING DEAL OFFER DEBATED

by Dorothy Sucher

"Delay in construction of a new Greenbelt high school is the lever by which a local developer is pressuring the city to endorse his bid for higher density rezoning of two large tracts of land; so citizens heard at a well-attended special meeting of the City Council on Monday night, Oct. 11.

"For the past nine months, the Board of Education has been trying to acquire land owned by Consolidated Syndicates, Inc. (Charles Bresler–Theodore Lerner), for a high school site. * * *

* * *

"Some time ago, it became known that the developer would agree on the price, provided the city would help him obtain higher density rezoning for two of his tracts (Parcels 1 and 2, totalling 230 acres) near the center of Greenbelt. If the city refused, he threatened to delay the school site acquisition as long as possible through the courts.

* * *

"Blackmail

"'It seems that this is a slight case of blackmail,' commented Mrs. Marjorie Bergemann on Monday night, and the word was echoed by many speakers from the audience.

"Councilman David Champion, however, denied that it was 'blackmail,' explaining that he would rather 'refer to it (i.e., the negotiations–Ed.) as a two-way street.'

"Speaking from the floor, Gerald Gough, commented: 'Everyone knows there's a need for a school–just walk through the halls of High Point. The developer knows there's a need and says, 'we'll meet your need if you meet our need.' In my opinion, it's highly unethical.

* * *

"Delay Probable

"Mayor Edgar Smith remarked that it should be made clear that refusing the developer's terms did not necessarily mean the loss of the school site; that it would, however, probably mean a two or three year delay in the construction of the school.

* * *

"Among the parents who spoke was Mrs. Joseph Rosetti, who said: 'I have several children going into high school, but I would rather adhere to the Greenbelt Master Plan than overcrowd the town with dense development. I would stand for my children's discomfort, rather than give in to a blackmailing scheme.

* * *

"Councilman William Hoff asked whether the City Council itself knew all the facts about the transactions with the Board of Education and said: 'We weren't ever informed about the money transactions between the developer and the school board.'"

In the same issue of October 14, a letter to the editor from Miriam and Howard Laster was published. This letter to the editor was entitled, "An Unethical Trade" and stated, in relevant part, the following:

"We have been following with great concern the county's attempt to build a high school in Greenbelt. As parents of a junior high school daughter, as well as three other children who eventually will attend secondary school, we are eager to see an excellent high school construction quickly in our city. However, we resent the way in which our needs are being exploited cynically by the land developer who owns the property on which the school is scheduled to be built.

* * *

"We do not envy the council its difficult choice. However, we believe strongly that it is a choice the council never should have been asked to make. The

two issues should not be confused, and the Board of Education should have rejected the developer's attempt to tie them together. Since it did not, we request that the council reject this unethical trade.

* * *

"While we never should have been forced to make such a choice, we believe that ethical and practical considerations both argue against agreeing to the developer's demands. We hope that other Greenbelt residents will join in indicating this at the next city council meeting Monday."

The second article appeared in the News Review of October 21, 1965, and contained, in relevant part, the following:

"COUNCIL REJECTS BY 4-1
HIGH SCHOOL SITE DEAL

by Mary Lou Williamson

"More than 150 citizens came to hear how the new City Council would respond to pressure by a local developer for higher density zoning on a large tract of land in exchange for uncontested consummation of the sale of a Greenbelt senior high school site to the Board of Education at the Council meeting Monday night.

"Council sat quietly listening for more than an hour to citizen statements before voting to reject the proposal (4-1) with Councilman Dave Champion dissenting. * * *

* * *

"A procession of citizens took the floor to make impassioned speeches—some from prepared texts, some extemporaneously. The mayor occasionally had to caution them to refrain from engaging in personalities.

"Albert Herling suggested skulduggery in the September court postponement. Although he praised most of the City Manger's report, he criticized the section entitled 'Risks and Conclusions,' saying they

appeared negative in the extreme. He suggested a list of positive steps that council ought to take: 1) fight Bresler's 'blackmail'; 2) make clear to the Board of Education—no deals; 3) make clear to the District Council (zoning authority) unanimous opposition to the requested R-30 zoning; and 4) seek the swiftest possible court settlement. * * *

* * *

"Pilski asked if anyone in the audience cared to speak in support of Bresler's proposal.

"Only James Martin took the floor. He suggested that Bresler's action was not 'blackmail' but the legitimate advance of his rights to develop his land, Martin suggested, by way of example, that GHI's long-range planning committee had been doing much the same thing some months ago. He alleged that the density of the 'frame homes (GHI) is far more atrocious than anything Bresler's considering.'"

Also in the October 21 issue, an editorial appeared entitled, "THE LIMITS OF COMPROMISE" in which it was stated:

"But some of the developers are not satisfied with half a loaf; they want the whole loaf, and in a few instances, do not seem to care what methods are used to achieve their goal."

In the January 20, 1966 issue of the News Review, a letter to the editor from Clifford Simonson, entitled, "ANOTHER CRIPPLING BLOW" was published. It stated in relevant part:

"On January 11 the county board of education and the developer Charles Bresler struck another crippling blow at Greenbelt's Master Plan. Bresler, in flagrant disregard of that plan and the wishes of nearly all Greenbelt citizens, moved to compound even further the serious problems which a senior high school in his land-locked property on parcel 2 would create."

After stating why the new school location was undesirable, Mr. Simonson continued:

"Chairman W. Carroll Beatty of the school board never did answer Elaine Skolnik's question as to whether the board had fully calculated all costs associated with developing the respective school sites. Board member Thomas Hicks never did answer questions as to how the eleimination of a perimeter road would affect the core of Greenbelt. The evasive answers can only lead one to the conclusion that such vital aspects were never really considered.

"Must we cannibalize original Greenbelt to spawn unwieldy, unplanned, and unwanted development, solely for the convenience and profit of the developer?"

In the issue of April 7, 1966, the News Review published an article by Mrs. Skolnik under the headline: "BRESLER REPUDIATES COVENANT SIGNED WITH CITY IN 1962", in which it was indicated that news of the Release of Covenants filed for record on June 2, 1964 "came as a complete surprise to city officials since Bresler had not at any time during the past 22 months notified the city that he had unilaterally abolished the covenant agreement." and that "The city is now looking into the legality of the 'Release of Covenants' filed by Bresler since it was not a party to the document."

A letter to the editor from Mrs. E. S. Ross was published in the News Review of May 19, 1966, which was as follows:

"I wonder if the rest of Greenbelt's residents were as startled as I was to read in Sunday's Washington papers of Spiro T. Agnew's invitation to Charles Bresler to run as the Republicans candidate for State Comptroller?

"The article in the Star made mention of Mr. Bresler's recent land dealings for the State. I wonder how much is known of his land dealings against this city?"

The News Review, in its issue of June 9, 1966, under the headline, "CHARLES BRESLER TO RUN FOR STATE COMPTROLLER." published an article indicating that Mr. Bresler expected to announce his candidacy for Maryland State Comptroller on the Republican Ticket on Saturday, June 11. The article then stated in relevant part:

> "Bresler, a real estate developer and builder, owns most of the remaining vacant land in Greenbelt. He developed the Plaza Apartments, Lakecrest Homes and Charlestowne Village, and was the original developer of Boxwood Village.
>
> "Bresler is currently faced with a series of legal actions instituted by the City of Greenbelt. * * *
>
> * * *
>
> "Reportedly, a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards."

It should be observed that until the letter to the editor in the News Review issue of May 19, 1966, and in the issue of June 9, 1966, there had been no mention of any kind in any News Review issue offered in evidence which referred to Mr. Bresler as holding or seeking any public office of any kind or of his fitness or lack of fitness for such an office, although Mr. Bresler was a member of the Maryland House of Delegates from Montgomery County (and not from Prince George's County where the City of Greenbelt is located), and there was no reference to any act of Assembly or other political activity by Mr. Bresler which might possibly affect the City of Greenbelt, its inhabitants or Prince George's County generally. All of the references were to Mr. Bresler as a land owner and developer.

Finally, on June 30, 1966, the News Review published an article under the headline "GHI FILES SUIT AGAINST SCHOOL BOARD; BRESLER INFLUENCE CITED" which stated in relevant part:

"The bill of complaint for injunction, filed by GHI's special attorney, David Reich, stated that in reversing its decision to buy parcel 15 (the city-preferred Beltway-Lake site), the school board was influenced by considerations other than the public interest and by the pressures and influence which the developers (Charles Bresler, Theodore Lerner, and associates) were able to assert by reason of their ownership of both sites (parcels 2 and 15).

* * *

"The chairman of the county school board is W. Carroll Beatty, who is a director of the Suburban Trust Company which has held the mortgages on much of Bresler's properties in Greenbelt. The county school board attorney is Paul Nussbaum, who is on the Suburban Trust Company's Advisory Committee."

The present action for damages for libel was filed on July 18, 1966, and an amended declaration was filed on November 7, 1966. The plaintiff, Mr. Bresler, claimed in the *ad damnum* clause, $1,000,000 compensatory damages and $1,000,000 exemplary or punitive damages. He alleged that in the publications mentioned in the amended declaration, the defendants, Publishing Association and Mr. Skolnik—

"[F]alsely and with express malice printed [the charges of blackmail] * * * for the purpose of imputing to the Plaintiff the commission of the crime of blackmail; and for the purpose of exposing the Plaintiff to public scorn, hatred, contempt, disgrace and ridicule; and for the purpose of injuring the Plaintiff in his aforesaid business and occupation; and to degrade Plaintiff in the esteem or opinion of the residents of the City of Greenbelt and the State of Maryland and elsewhere; and to infer and imply that Plaintiff is untrustworthy; and to injure Plaintiff in his credit and financial transactions; and to infer and impute to Plaintiff corrupt or dishonest motives in his dealings with City, County and State

officials and others; and to impute to Plaintiff moral turpitude, immoral conduct, dishonesty, fraud and falsehood.

"The aforesaid publications were intended to and did injure the Plaintiff as follows: They did injure the Plaintiff in his business and occupation, and did injure Plaintiff in his business reputation and practice, and did injure Plaintiff in his financial credit and transactions, and did expose the Plaintiff to public scorn, hatred, contempt, disgrace and ridicule, and did degrade Plaintiff in the esteem or opinion of the residents of the City of Greenbelt and the State of Maryland and elsewhere.

"Said publications were made recklessly and without reasonable justification or excuse, and were printed and published in said newspaper by and with the knowledge and consent of each of said Defendants, and said Defendant, Alfred M. Skolnik, personally directed, supervised, assisted and actively participated in, and cooperated in, the preparation, writing, editing, printing and publication of, the publications aforesaid."

The plaintiff did not elect a jury trial.

The defendants, in addition to the general issue plea that they did not commit the wrongs alleged, filed six other "defenses" challenging the sufficiency of the declaration to state a cause of action, and alleging that the publications were constitutionally protected under the First Amendment to the Federal Constitution and under Article 43 [40] of the Declaration of Rights of the Maryland Constitution; that the words were fair comment and were published without actual malice, and are privileged; and, that the words were published in good faith, without malice and with reasonable and probable cause. There was, however, no plea in justification of the truth of the alleged libelous words. The defendants elected a jury trial.

At the trial of the case, which began on January 3, 1968, before Judge Mathias and a jury, the plaintiff called

the defendant, Mr. Skolnik, as an adverse witness. After testifying to many of the facts already given concerning the operations of News Review, his education and position and duties with the News Review, as well as his and Mrs. Skolnik's connections with CFPG and GHI, Mr. Skolnik was interrogated in regard to the article in the News Review issue of October 14, 1965, in which the word "blackmail" was used. He testified that he knew "blackmail is somewhat in the category of a crime." He said that he did not know who had inserted the bold-face subheading "BLACKMAIL" and stated that "It probably struck them, put in the word, "blackmail", and further that "All we were doing was reporting what was said there and also what someone else said that it wasn't blackmail." When asked about Mrs. Marjorie Bergemann, who was quoted in the article of October 14 as using the phrase "a slight case of blackmail," Mr. Skolnik testified that Mrs. Bergemann was elected a member of the Steering Committee of CFPG six months after the article was published and that she was a friend of his.[1] Mr. Skolnik also identified Gerald Gough who was quoted in the article as using the phrase "highly unethical" as a member of GHI and CFPG. Mrs. Joseph Rosetti, who was quoted in the article as using the phrase "blackmailing scheme", was identified by Mr. Skolnik as a member of CFPG and also as a current member of its Steering Committee as well as a friend of his.[2]

Albert Herling, mentioned in the article in the News Review issue of October 21, 1965, as having "suggested" that the city council "fight Bresler's blackmail" was identified by Mr. Skolnik as both a member of GHI and of the

---

[1]Mrs. Dorothy Sucher, a witness for the defendants, who wrote the article, subsequently testified that Mrs. Bergemann was a neighbor and a "friendly acquaintance", who had requested that Mrs. Sucher contribute to the CFPG legal fund which was used to file an action for damages against Mr. Bresler.

[2]Mrs. Rosetti was also one of the unsuccessful plaintiffs in the damage actions brought against Bresler with the CFPG legal fund.

Steering Committee of CFPG at the time the article was published. Albert Herling was mentioned in the October 21 article as having used the word "skulduggery". Mr. Skolnik testified that this "is the word that the reporter used to interpret what Mr. Herling was saying" and that the word skulduggery "means something amiss, something improper perhaps."

Mr. Skolnik admitted in his testimony that he had written parts of the editorial in the News Review issue of October 21 in which it was stated that some developers "do not seem to care what methods are used to achieve their goal" and that he was referring to Mr. Bresler and his associates.

Mr. Skolnik was referred to the News Review issue of June 9, 1966, which attributed to The Evening Star a report that Mr. Bresler intended to announce his candidacy for Maryland State Comptroller, and which related at length legal proceedings in which Mr. Bresler was involved, including a suit by the city in regard to drainage problems in Boxwood Village. Mr. Skolnik admitted that this suit was against two corporations, one of which Bresler had no interest in, and not against Bresler personally, and that the News Review failed to report that the case was dismissed as to Boxwood Village and later settled with the other corporation in which Bresler had no interest. The article further stated:

> "Reportedly a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards."

Mr. Skolnik stated that this article had been written jointly by him and his wife, but that Mrs. Skolnik had written the above paragraph. He further stated that his wife had attended a CFPG meeting at which approximately 15 to 20 homeowners from Boxwood Village desired to air their complaints, but the chairman of the meeting said that they would not discuss the complaints, so that Mrs. Skolnik

talked to them after the meeting adjourned. When asked what suits had been filed, Mr. Skolnik testified: "No, I don't know anything about suits. All I know is that people were complaining about the fact that they were having troubles." He stated that he thought "[L]egal proceedings include complaints."

Mr. Skolnik was questioned about an article in the June 16, 1966 issue of the News Review entitled, "CFPG DRIVE LAUNCHED" in which the "collection of funds earmarked specifically for legal fees" by the Steering Committee of CFPG was publicized. In the article it was stated that "Citizens suits are now being prepared in connection with an eight-story high rise apartment on Charlestowne-Village acreage and other actions of developers which are contrary to the Greenbelt Master Plan."

When interrogated in regard to whether or not Mrs. Skolnik assisted in any way in the collection of those legal funds, Mr. Skolnik answered, "I don't recall any activity in that respect", and affirmatively stated, "I don't think she had anything or much to do with the drive for legal fees", but when shown the last paragraph of an article in the News Review which solicited assistance and listed three telephone numbers to call, he stated that the last number was his wife's telephone number and that he and Mrs. Skolnik did not have separate telephones.

Mr. Skolnik stated that this suit arose out of a suggestion by Mayor Smith that the City's suit for an injunction against the violation of the covenants be supplemented by private suits, in the event that it was determined that the City had no standing to maintain its suit. Mayor Smith was a member of the Steering Committee of CFPG at that time, and was chairman of its Official Liaison Committee. Mr. Skolnik also testified that the contemplated suit was to be a suit in equity for an injunction and for no other purpose. When asked about an article in the July 7, 1966 issue of the News Review, entitled "CFPG DRIVE UNDERWAY", which stated that the legal funds were "to

support legal action to maintain the garden-city character of Greenbelt and to help realize the City's Master Plan", Mr. Skolnik stated that one of the two telephone numbers given for those willing to assist to call, was the telephone number of Mrs. Skolnik.

In neither the News Review article in the June 16, 1966 issue, nor in the article in the issue of July 8, 1966, was there any mention of the fact that the suits were against any one except Mr. Bresler or for any purpose other than the stated purpose, i.e., to supplement the injunctive suit of the City. Mr. Skolnik on further examination, however, admitted that the suit which was instituted was one *at law* in which each plaintiff, including Mrs. Rosetti, claimed $175,000 compensatory and punitive damages, together with an injunction pursuant to Maryland Rule BF 40a.[3]

Mr. Skolnik further testified that he did not know of any support by CFPG of suits against any developers other than Bresler who were developing in Greenbelt contrary to the City's Master Plan. He stated that GHI, which had opposed MNCPPC's recommendations for R-30 (townhouse) zoning on Parcels 1 and 2, is, itself, building 25 townhouses on its own land.

Mr. Skolnik was asked: "Q. Have you ever instructed any of the members of your staff to call Mr. Bresler to verify any article which concerned him? A. No, we have no general—what we have is a general rule, that if you don't know the facts, if there is confusion about the facts, you call the principals involved." When asked if on any occasion there had been doubts to the facts where he had felt that it was necessary that he or the reporters communicate with Mr. Bresler, Mr. Skolnik was able to recall two

---

[3]It was stated at the argument, as well as in Mr. Bresler's brief without contradiction that this law suit was tried after the present case and that four of the plaintiffs withdrew from the case before and during trial. The Circuit Court granted a motion for a directed verdict against the remaining plaintiffs and a judgment for costs entered upon the directed verdict has not been appealed.

instances, one "a few months ago" in regard to a report that Bresler was removing the trees on land owned by him directly across from a new project he had built and the other in regard to a newspaper report in the Washington press that a high-rise apartment project was to be built on Parcel 15. Mr. Bresler gave them the correct facts on these two occasions.

Mr. Bresler, himself, was the next and final witness for the plaintiff. In response to questions as to whether he owned "the bulk of the undeveloped land in Greenbelt," he testified that he had an interest varying from 16-1/3 to 25 per cent in several parcels of land in Greenbelt, which totaled 430 acres, whereas, other developers owned approximately 2000 acres. Zoning petitions had been filed for approximately 600 acres of land, he having an interest in such petitions for about 230 or 340 acres. Mr. Bresler further testified that no suit had been filed against him for any alleged failure to make construction corrections as required by the County building standards.

He also stated that "the only personal suit I have had in Greenbelt is the one the City filed against me at the instigation of the News Review and G.H.I." He denied he was a blackmailer or that he had attempted to blackmail the City Council or the Board of Education or any one in connection with any of his projects or developments.

Mr. Bresler further testified that he had tried but could not obtain a subscription to the News Review. He tried to buy the paper but could not find any place to purchase the News Review. His office had telephoned for a mail subscription and "was told they didn't mail them out." He was surprised to hear Mr. Skolnik's testimony that the News Review has "50 to 75 people who receive mail subscriptions." When derogatory articles appear in the News Review, however, some person who receives the paper will mail one "to the Breslers. My wife opens it and one of my six kids will get up then and want to know what it is all about * * *. And the local residents call referring

to the Bresler news because invariably two or three articles are on the front page mentioning me by name and allude to my name—as one of them said, if it wasn't for for me there wouldn't be any paper."

On cross-examination, Mr. Bresler testified that he had signed the covenants in regard to building townhouses averaging 7 units an acre for 50 acres because "this was what they were going to do with everybody, that they were going to get the same covenants from everybody."[4] He said that he had in fact erected 144 townhouses, but the City had approved 12 units an acre for another developer, Lakeside North, a few months after the covenants "to assure no density larger than seven units per acre" had been required from him. He also stated that the developer of Lakeside North had agreed to build "townhouses, not garden apartments in that development," but did not "keep his word either" but the City took no action against that developer.

At the end of the plaintiff's case, the defendants made a motion for a directed verdict which was denied by the trial judge. The defendants then put on their case.

The first witness for the defendants was the mayor of Greenbelt, Edgar L. Smith. He testified that he was in his third term as mayor, having been prior to his election as mayor, a member of the City Council of Greenbelt (from 1959-61). He had been city attorney for the municipality for about six months. He stated that he had been present at the meetings of the City Council on October 11 and October 18, 1965, and that the articles in the issues of October 14 and October 21 represented "fair and accurate" reports of the respective meetings.

---

[4] Lewis Bernstein, a former City Planning Board Chairman and member of the Greenbelt City Council, who testified as a witness for the appellants confirmed Mr. Bresler's testimony in this regard when he admitted that it was his intention that Bresler "would be afforded no more or no less, no worse or no better treatment than any other developer in the City of Greenbelt."

On cross-examination, Mayor Smith stated that the date on which the City of Greenbelt first learned that Bresler intended to build a high-rise apartment was January 17, 1966, but the City Manager's Report for the week ending *October 22, 1965*, (a copy of which Mayor Smith assumed he received, as he normally does) indicated that Bresler was to construct a "High Rise 183 units", that the units "To be constructed" were in excess of the covenants and that "Mr. Brooks [city attorney] has been requested to prepare to take action to enforce the covenants." He testified that he did not think that either he or the City Council ever voted against any of CFPG's recommendations, and that he did not take issue with an article in the News Review which said that he went to meetings of the County Commissioners as a delegate from CFPG, and stated that he "didn't tell them I was Mayor, because I was there in a dual capacity. As Mayor, as delegate from CFPG." He also testified in regard to several committees set up by the Steering Committee of CFPG and that he was Chairman of the Official Liaison Committee as well as a member of the Steering Committee. Charles Schwan was Chairman of the Membership Committee and Albert Herling[5] was Chairman of the Public Relations Committee. Mayor Smith further testified that he was present and heard the entire discussions and that there was nothing that was discussed at either the meeting of the City Council of October 11 or October 18 which would "justify the use of the word 'blackmail.'" He further stated:

> "If there was any evidence that there was blackmail, any definite evidence of anything like this, the Council would have taken some action.
>
> "Q. You, as Mayor, would have told your Police Department to do something, wouldn't you?

---

[5]In the article in the News Review of October 21, 1965, Mr. Herling is reported as having "suggested skulduggery in the September court postponement" and that the council should take steps to "fight Bresler's 'blackmail.'"

"A. Yes, we would have gone further than that, the State's Attorney's office probably."

Mary Louise Miller Williamson testified for the defendants that she had written the article in the issue of the News Review of October 21, 1965, which referred to Mr. Herling's alleged allegation of "blackmail" and "skulduggery." On cross-examination, she stated, "I paraphrased his sentence but I selected out the word 'blackmail' was his word and I wanted to denote it was his word I was picking up * * *." As to the word "skulduggery" attributed to Mr. Herling, she stated:

"I did not use that word. This is a good example of what happens on Tuesday night when the other members of the Editorial Board will read through an article. Apparently it was an effort to shorten. This was quite a long article and this is somebody else's phrase. That I do recall."

She further stated that the $5 contribution she made to the legal fund of CFPG was to be used to "preserve the Master Plan of Greenbelt." She was not told, however, that this fund would be used to sue Mr. Bresler for damages in excess of a million dollars. She assumed that Mrs. Skolnik was soliciting for these funds, inasmuch as she was on the Steering Committee. When asked whether there was "anything in the discussion * * * which justified the use of the word 'blackmail' ", Mrs. Williamson replied: "There is no connection as far as I can see between what Mr. Bresler, what the situation—the offer, there is no relation between that and a crime of blackmail. There is a difference."

Dorothy Sucher testified on behalf of the defendants that she had written the article in the issue of the News Review of October 14, 1965, which first used the word "blackmail". She edited the second article in the issue of October 21, 1965, written by Mrs. Williamson and stated that the use of the word "skulduggery" was her idea. She is a member of CFPG and believed that she had contributed $1 to its legal fund drive. She stated that her article was not intended to be a complete quotation of every-

thing that was said at the meeting and that she had not used all of her notes in writing the story. She testified that she "knew blackmail was a crime." She recalled that Mrs. Skolnik participated in the discussion at the meeting but could not remember if Mrs. Skolnik had used the word "blackmail", but she could not say she had not used it. She knew that she did not quote her. She had quoted Mrs. Bergemann, however, who used the word "blackmail" and Mrs. Bergemann had requested that she contribute to the legal fund of CFPG. She did not know that this legal fund was to be used to try to collect damages from Mr. Bresler. She testified that she thought that she had inserted the subheading "blackmail" in her article, which was "edited by a number of people, but I don't remember any discussion."

The last witness for the defendants was Elaine Skolnik, who testified that she had attended the meeting at which Mrs. Bergemann had used the word "blackmail". She stated that Mrs. Bergemann was a friend of hers as was Charles Schwan. She further stated that she had three and one-half years of college education. She testified that to her the words "started legal proceedings" meant "they went to a lawyer." She stated that she had not urged any litigation against Mr. Bresler; she is a member of the Steering Committee of CFPG and voted "to endorse the citizens, which was a suit to enjoin the building of the high rise apartment and to enforce the covenants." She stated that she did not solicit for the legal fund of CFPG and that her telephone number was "probably in the papers to—as far as volunteers * * * to go out and solicit." The legal funds were to be used to "* * * see that Greenbelt was developed according to the Greenbelt Master Plan." In regard to "blackmail" she testified:

> "It could be a crime, especially it is a crime when you think someone has exerted the money or tried—where you are being paid off or where you can land in jail.

"Q. Right. Well was Mr. Bresler involved in the crime of blackmail as a result of what he was proposing to the City Council or Board of Education?

"A. Not the crime of blackmail.

* * *

"Q. I am asking you if you think the word 'blackmail' was a proper description to be applied to what Mr. Bresler was asking the City Council or the Board of Education to do?

"A. In the context of the meeting, yes, it was proper."

The defendants again moved for a directed verdict at the conclusion of all the testimony and the trial court overruled this motion. The trial court pointed out that there was no plea of justification that the allegations of blackmail were true. Counsel for the defendants stated:

"What I am saying is we don't contend that the plaintiff committed blackmail, that is all. We don't intend [contend] the plaintiff committed the crime of blackmail."

The trial judge gave a comprehensive charge to the jury to which the defendants filed two exceptions. The charge and exceptions will be particularly mentioned when we consider the alleged errors in the charge.

In his opening statement to the jury, counsel for Mr. Bresler stated, in part, the following:

"Now we have not been able to determine why Mr. Bresler was singled out. I say this for this reason. *It is true he is a public figure and I suppose everybody needs a whipping boy*, but the evidence will show, one, that Mr. Bresler is *only a minority owner in this land.* Unfortunately, he is not wealthy enough to have purchased this land himself and built and developed it himself, so his interest approximates fifteen per cent or sixteen and two-thirds per cent, or in one case, I believe, it ran as high as twenty-

five per cent, *but a minority owner.*" (Emphasis supplied)

As we have indicated, the jury returned a verdict of $17,500 damages ($5,000 compensatory and $12,500, punitive) in favor of Mr. Bresler and against the Publishing Association and Mr. Skolnik.

The appellants make four contentions before us:

1. The publications are constitutionally protected because (a) they relate to Bresler's qualifications as a public official, and (b) to his activities of public interest as a public figure.

2. The two reports of the meetings of the City Council at which the term "blackmail" was used are particularly entitled to constitutional protection because they are fair and accurate reports of what was said during official public meetings.

3. There was insufficient evidence as a matter of law to establish that the defendants and appellants published a false and defamatory statement about the plaintiff and appellee Bresler with knowledge that it was false or with reckless disregard of whether or not it was false.

4. The trial court erred in its instructions in four particulars.

Before considering specifically the four contentions of the appellants, several general observations should be made.

First of all, it seems apparent that but for the federal constitutional protections which the appellants allege are applicable and on which they principally rely, the facts alleged and proved in the present case would, under the Maryland law relating to libel, present a case of libel for which damages, both compensatory and punitive, could be awarded by a jury to Mr. Bresler against the defendants and appellants. It is well settled in Maryland that words which falsely charge a person with, or impute to him, the commission of a crime for which he is liable to be prosecuted and punished are actionable *per se.* As Judge Horney, for

the Court, aptly stated in *American Stores Co. v. Byrd*, 229 Md. 5, 12-13, 181 A.2d 333, 337-38 (1962):

> "The historical distinction between slander *per se* and slander *per quod* is undoubtedly based on the theory that in words actionable *per se*, their injurious character is a fact of common notoriety, and necessarily import damages not requiring proof of special damages (cf. *Foley v. Hoffman*, 188 Md. 273); while, if the words used are not defamatory *per se*, they must be explained by innuendo and colloquium (cf. *Walker v. D'Alesandro*, 212 Md. 163). See *Odgers on Libel and Slander* (Am. Ed. by Bigelow), p. * * * 309.
>
> "Consistently this Court has held that words which falsely charge a person with or impute to him the commission of a crime for which he is liable to be prosecuted and punished are actionable *per se*. See, for example, the early case of *Dorsey v. Whipps*, 8 Gill 457, 462 (1849), where, in quoting 1 *Starkie on Slander*, p. 43, it was said: 'To impute any crime or misdemeanor, for which corporal punishment is to be inflicted, is actionable without proof of special damage.' And see *Haines v. Campbell*, 74 Md. 158, 21 Atl. 702 (1891), where it was stated that if spoken words convey an implication of crime, they are actionable in whatever mode their meaning may be expressed, that is, whether by way of interrogation, insinuation, ironic praise or any other form of speech understood by the hearers. See also *Wheatley v. Wallis*, 3 H. & J. 1, (1810); *Bonner v. Boyd*, 3 H. & J. 278 (1811); *Long v. Eakle*, 4 Md. 454 (1853); *Shockey v. McCauley*, 101 Md. 461, 61 Atl. 583 (1905). Other cases in this area are collected in 14 M.L.E., *Libel and Slander*, § 14 (Commission of Crime).
>
> "It may well be that the words—'did you get (or pick up) the $117 that was on the counter'—do not in and of themselves carry an imputation of having stolen the money. But there is no requirement that the defamatory words must embody an outright

> accusation of the commission of a crime, for '(i)n cases of slander, words take their actionable character from the sense in which they appear to have been used, and that in which they are most likely to be understood by those who hear them.' *Garrett v. Dickerson*, 19 Md. 418, 447 (1863). And if the slanderous words used are such as in ordinary 'lay conversation' will impute, or be understood to impute guilt, that is sufficient to make them actionable *per se*. *Blumhardt v. Rohr*, 70 Md. 328, 17 Atl. 266 (1889). Cf. *Pollitt v. Brush-Moore, Etc., Inc.*, 214 Md. 570, 575, 136 A.2d 573 (1957)."

American Stores was a far weaker case for the plaintiff on the facts in charging the commission of a crime than are the facts in the present case, but we held that the jury verdict for the plaintiff for $25,000 punitive damages was supported by the evidence.

In the instant case the word "blackmail" was used as a sub-heading without qualification. The charge of blackmail was stated in the News Review issue of October 14, 1965, and was again repeated in the next week in the issue of October 21. The appellants argue that the word "blackmail" was used in a non-criminal sense, but the intended meaning was for the jury to determine. *American Stores v. Byrd, supra.* The jury found against the appellants.

There is little doubt that a statement that a person is guilty of blackmail charges the commission of a crime for which a person may be prosecuted and punished. In Maryland extortion or blackmailing is recognized as a crime. See Code (1957) Article 27, Sections, 561, 562 and 563,[6]

[6] Article 27, § 561 makes it a statutory felony, punishable by 2 to 10 years imprisonment in the penitentiary, to knowingly send or deliver a letter, with or without name attached, threatening to accuse any person of an indictable crime *or* of anything which if true would bring a person into contempt or disrepute or to do any injury to person or property, with a view or intent to extort or gain money, goods, chattels or other valuable thing; Section 562 makes it a statutory felony, punishable by 2 to 10 years imprisonment in the peniten-

indexed under "CRIMES AND OFFENSES" in Volume 10 as:

> "Blackmail.
>
> Threatening letters, art. 27 §§ 561 to 563. See Threats and Threatening letters."

A similar reference is made in Vol. 10 under the separate heading "BLACKMAIL."

The charging of Mr. Bresler with having committed blackmail could be found by the jury (as it was) that he was charged with the commission of a crime.

As the Court of Special Appeals pointed out in Note 3 in its opinion in *Iozzi v. State*, 5 Md. App. 415, 247 A.2d 758 (1968), in considering a prosecution under Article 27, Section 562:

> "Generally, the term 'blackmail' is equivalent to and synonymous with 'extortion'. 31 Am.Jur.2d, 905." (5 Md.App. at 418, 247 A.2d at 760)

See *Las Vegas Sun. Inc. v. Franklin, 74 Nev. 282, 329 P.* 867 (1958) (use of word "blackmail" in headline or tagline of newspaper libelous per se, but reversed on other grounds); *Culver v. Marx*, 157 Wis. 320, 147 N.W. 358 (1914) (charge of blackmailing slanderous per se); *Hess v. Sparks*, 44 Kan. 465, 24 P. 979, 21 Am. S.R. 300 (1890) (referring to defendant as a "blackmailer" slanderous per se). See also *Mitchell v. Sharon*, 51 F. 424 (N.D. Calif. 1892), (*aff'd* 59 F. 980 (9th Cir. 1894) (stating that charging a person with being a "blackmailer" is equivalent to charging such person with being guilty of the crime of "extortion" but holding that words were not slanderous per se because it imputed only an intent to commit blackmail, not the actual crime).

---

tiary, to threaten or accuse verbally a person under the same circumstances set out in Section 561; Section 563 makes it a misdemeanor, punishable by not exceeding 2 years in jail or the house of correction, to falsely accuse any person or threaten to accuse another with the intent to extort money or procure other profit, of any crime or anything which if the accusation were true would tend to bring him into contempt or disrepute.

See generally 53 C.J.S. *Libel and Slander*, § 65, page 110 (1948), where it is stated:

> "Charging a person with being a blackmailer is equivalent to charging him with being guilty of the crime of extortion, and is slanderous per se in jurisdictions where extortion or blackmailing is recognized as a crime."

It is well settled that under the Maryland Constitution and our prior decisions, that there was sufficient evidence to support the jury's verdict in this case.

Article 40 of the Declaration of Rights of the Maryland Constitution provides:

> "That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege."

Our predecessors, in *Negley v. Farrow*, 60 Md. 158 (1883), held that liberty of the press, "is a right belonging to every one whether a proprietor of a newspaper or not, to publish whatever he pleases without the license, interference or control of the government, being responsible alone for the abuse of the privilege." (60 Md. at 176) *Negley* involved an action against the publishers and owners of "The Herald and Torchlight", a newspaper published in Hagerstown, by the plaintiff, a republican Senator from Washington County, who claimed that an article in the paper charged him with collaborating with a corrupt democratic ring, with having voted for the ring's candidate after having participated in the republican caucus in nominating another person, with aiding the ring in defeating a bill for repeal of an Act authorizing the publishing of laws in newspapers, and charging him with thereby proving false to his political obligations and a traitor to his party and bringing dishonor upon the republicans of Washington County who had elected him to the Senate. The article further charged the Senator with having been

given a contract to furnish stone to a canal by its president, the head and front for the democratic ring, because he was a Senator "and had a vote to give in the Senate." The jury rendered a verdict for the plaintiff for $3,000. In holding these charges to be libelous *per se*, Judge Robinson, for the Court, stated:

> "No one denies the right of the defendants to discuss and criticize boldly and fearlessly the official conduct of the plaintiff. It is a right which, in every free country belongs to the citizen, and the exercise of it, within lawful and proper limits, affords some protection at least against official abuse and corruption. But there is a broad distinction between fair and legitimate discussion in regard to the conduct of a public man, and the imputation of corrupt motives, by which that conduct may be supposed to be governed. And if one goes out of his way to asperse the personal character of a public man, and to ascribe to him base and corrupt motives, he must do so at his peril; and must either prove the truth of what he says, or answer in damages to the party injured.
>
> "The fact that one is the proprietor of a newspaper, entitles him to no privilege in this respect, not possessed by the community in general. The law recognizes no duty, imposed on him, arising from his relations to the public, to defame and libel the character of any one, and if he does, it is no answer to say, he did so in good faith, and without malice, honestly believing it to be true. Malice in one sense may be said to be an essential element in an action for libel, but not malice in the ordinary sense of hatred or ill will against the person, of whom the defamatory words are spoken. If the publication be in itself libellous, the law in all such cases implies malice; in other words it says, you have no right to libel another, whatever may have been the motive or intention." (60 Md. at 176-77)

Negley v. Farrow was cited with approval and portions of the opinion of the Court in that case were quoted by us in

A. S. Abell Co. v. Kirby, 227 Md. 267, 274-75, 176 A.2d 340, 343 (1961).

In addition to the publications that Mr. Bresler had committed blackmail, there were publications that he had engaged in "An unethical trade", had been guilty of "skullduggery", had had legal proceedings "started against him for failure to make construction corrections in accordance with county standards." These allegations were injurious to Mr. Bresler in his business as a contractor and were libelous *per se*. As Judge (later Chief Judge) Prescott, for the Court, stated in *Thompson v. Upton*, 218 Md. 433, 437, 146 A.2d 880, 883 (1958):

> "We have so recently had occasion to pass upon the legal principles involved herein, *Pollitt v. Brush-Moore, Etc., Inc.*, 214 Md. 570, 136 A.2d 573, that it will be unnecessary to unduly elaborate upon them. It has been repeatedly stated that the scope of libel is wider than that of slander. This Court stated in *Bowie v. Evening News*, 148 Md. 569, 574, 129 A. 797, that it had been said that there is no definition of the term 'libel' sufficiently comprehensive to include all cases. We shall not attempt to do what has baffled the Courts for these many years, namely, to compose an all-inclusive definition thereof. However, libel includes any unprivileged (i.e., a publication not having an absolute privilege), false and malicious publication which by printing, writing, signs or pictures tends to expose a person to public scorn, hatred, contempt or ridicule, *Foley v. Hoffman*, 188 Md. 273, 284, 52 A.2d 476; and also embraced therein is any such publication that relates to a person's office, trade, business or employment, if the publication imputes to him some incapacity or lack of due qualifications to fill the position, or some positive past misconduct which will injuriously affect him in it. *Foley v. Hoffman, supra; Pollitt v. Brush-Moore, Etc., Inc., supra*, at p. 577."

This rule has not only been applied to those who practice the profession, such as attorneys, clergymen, physicians and

teachers, but also to those engaged in business. The rule was specifically applied to contractors in *Plenol v. Beuttler*, 253 Iowa 259, 111 N.W. 2d 669 (1961); *Schneidman Heating, Inc. v. New York Plumbers' Specialities Co.*, 238 App. Div. 318, 264 N.Y.S. 146 (1933); *Williams v. Daily Review, Inc.*, 236 Cal. App.2d 405, 46 Cal. Rptr. 135 (1965); see generally 53 C.J.S. *Libel and Slander*, § 37 at 85 (1948).

In regard to the defense of fair comment, Judge (now Chief Judge) Hammond, after a review of the authorities, stated, for the Court, in *A. S. Abell Co. v. Kirby, supra:*

> "Maryland has consistently followed the majority rule—that defamatory misstatement of fact cannot be defended successfully as fair comment. *Snyder v. Fulton*, 34 Md. 128, 137-8; *McBee v. Fulton*, 47 Md. 403, 416; *Brush-Moore Newsp. v. Pollitt*, 220 Md. 132, 138. Cf. *Negley v. Farrow*, 60 Md. 158; *Coffin v. Brown*, 94 Md. 190. The distinction between 'fact' and 'opinion', although theoretically and logically hard to draw, is usually reasonably determinable as a practical matter: Would an ordinary person, reading the matter complained of, be likely to understand it as an expression of the writer's opinion or as a declaration of an existing fact? An opinon may be so stated as to raise directly the inference of a factual basis, and the defense of fair comment usually has been held not to cover an opinion so stated." (227 Md. at 273-74, 176 A.2d at 343)

There would seem to be little doubt that under the Maryland law, apart from the federal constitutional protections which the appellants allege apply, the jury's verdict and subsequent judgment thereon would be held to be supported by the evidence and affirmed.

Secondly, we should observe preliminarily that we have grave doubts that Mr. Bresler was a "public official" or even "a public figure" within the purview of the holdings of the Supreme Court of the United States in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.

Ed. 2d 686 (1964), and subsequent cases following and applying it, and in *Curtis Publishing Co. v. Butts* and its companion case, *Associated Press v. Walker*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967). Mr. Bresler was not a "public official" of Prince George's County, but was a member of the Maryland House of Delegates from Montgomery County. There is no suggestion that any of his activities as a member of the House of Delegates from another County had had any particular effect upon Prnce George's County or upon Greenbelt and its citizens and property owners. Substantially all of the libels were published some *seven months before* he was asked by Governor (now Vice President) Agnew to run for Comptroller of Maryland. Indeed until the issue of the News Review of May 19, *1966*, there was no mention in any of the relevant articles, letters or editorials published by the News Review of the fact that Mr. Bresler was a member of the House of Delegates or held *any public office*. The articles were directed at Bresler as a *private developer* of land in the Greenbelt area. There is no suggestion that he had any political or other prominence at the national, state, county or municipal level. However, in the present case we are not called upon to make this determination inasmuch as counsel for Mr. Bresler conceded in his opening statement that his client was a "public figure" and perhaps, more importantly, the trial judge in the lower court's instructions to the jury (as will be considered more fully later in this opinion) imposed the necessity upon the plaintiff Bresler to show actual malice within the definition of *New York Times* and Mr. Bresler did not object to the charge. The jury having found in his favor and there being no cross-appeal by him, we need not consider whether or not the trial court's charge was unduly favorable to the appellants as they clearly cannot object to this.

1.

The appellants contend that the publications involved in this case are entitled to federal constitutional protection under the decisions of the Supreme Court of the United States in *New York Times v. Sullivan, supra; Garrison v.*

Louisiana, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964); *Rosenblatt v. Baer*, 383 U.S. 75, 86 S.Ct. 669, 15 L.Ed.2d 597 (1966); *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81; 88 S.Ct. 197, 19 L.Ed.2d 248 (1967); and *St. Amant v. Thompson*, 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968), in regard to "public officials" and the decision of that Court in the companion cases of *Curtis Publishing Co. v. Butts* and *Associated Press v. Walker, supra*, in regard to a "public official" and a "public figure" within the meaning of those cases on the theory that the publications relate to Bresler's qualifications to hold office and concern his activities of public interest as a public figure. We have already indicated our doubt that the publications come within the ambit of the cases mentioned, and we need not repeat our reasons for this doubt. As we pointed out, however, because of the posture of the case and in light of the instructions of the trial court to the jury, it is not necessary for us to resolve this doubt as we may assume, *arguendo*, that Bresler was a public official and a public figure within the meaning of the federal cases mentioned, and also that the publications had relevance to Bresler's activities as a member of the Maryland House of Delegates from Montgomery County, or to his activities as a "public figure" (as contrasted with his private business activities with others), as a developer of land and builder of houses and apartments in the Greenbelt area.

2.

The second point raised by the appellants is that the two reports of the City Council meetings held on October 11 and 18, 1965, are particularly entitled to full constitutional protection because they are fair and accurate reports of what was said during public meetings. The appellants state in their brief, however, that recovery "based on accurate reports of official public meetings should be permitted, if at all, only under the most extraordinary circumstances where the evidence clearly establishes that a false factual charge of a highly damaging nature was published with knowledge of its falsity or with serious doubt as to its

truthfulness." What the appellants apparently overlook is that there was credible evidence from which the jury could (as it obviously did) find that the present case was indeed a "most extraordinary" one in which the publishers of the false statement knew it was false and that nothing at the public meeting justified the charge that Bresler had committed blackmail. As we have indicated, Mr. Skolnik and several witnesses for the appellants connected with the publication testified that they knew that "blackmail" indicated criminal conduct and further that nothing occurred at either of the October 1965 meetings of the City Council which justified such a charge of criminal conduct by him. Counsel for the appellants also stated at the trial that they did not contend that Bresler committed blackmail.

It is doubtful that there is any privilege of reporting, as items of news, the proceedings at a public meeting of a City Council, as contrasted with the publishing of an official report of the City Council itself. See *Buckstaff v. Hicks*, 94 Wis. 34, 68 N.W. 403, 59 Am. St. R. 853 (1896). In *Buckstaff*, a councilman of the City of Oshkosh, Wisconsin stated at a council meeting that the plaintiff, State Senator Buckstaff (from the Oshkosh district), who was opposing a charter amendment for Oshkosh, was "four-fifths of his time in a state of intoxication." The Oshkosh Northwestern published this statement. The Supreme Court of Wisconsin affirmed a judgment for Senator Buckstaff, entered upon a directed verdict for the plaintiff as to liability, and held that the report of the hearing before the City Council did not give the newspaper a qualified privilege to print the libelous material. Mr. Justice Winslow, for the Supreme Court of Wisconsin, stated:

> "It is certain that the publication in question is not the report of the proceedings of a court or legislative body. The term 'legislative body', in this connection, has not been extended to cover a City Council meeting. Newell, Defamation, S. & L. 599; Odyers Libel & S. 260. Doubtless, an official report

> of a city council meeting required to be published by law in the official city paper would be privileged; but that is not the present case. The report before us was not an official report. No official report of the meeting was even made or published. The article in question was a mere voluntary report, published as an item of news; hence it cannot be protected as an official report of a council meeting probably would be, nor does the fact that the newspaper was in fact the official paper of the city cut any figure." (94 Wis. at 39, 68 N.W. at 404, 59 Am. St. R. at 855)

Even if the qualified privilege did ordinarily apply, however, it will not protect the publisher against liability in damages for the publication of *irrelevant defamatory matter* and for *repetition* of false statements not otherwise privileged. *Negley v. Farrow, supra.* See *Pulvermann v. A. S. Abell Co.*, 228 F.2d 797, 802 (4th Cir. 1956), in which the Court, in summarizing the Maryland law, stated: "The rule in Maryland is that repetition of false statements is not privileged." See also Prosser, *The Law of Torts*, § 108 at 787 (3rd Ed. 1964).

Nor was it likely that *Bresler, himself*, would have access to the News Review to present his position in the matter and show that he had not committed blackmail, was not guilty of skulduggery or had not been sued for failure to carry out the county building requirements, in view of the refusal of the News Review to permit him to subscribe to it, even though it did mail some 75 copies of the publication to others at a nominal charge.

The issue before the City Council was not whether Bresler had committed blackmail and that issue was irrelevant to the real issue, as several witnesses for the appellants indicated. There appears to be no justification, in any event, for the *republishing* of the term "blackmail" in the issue of October 21 after its original publication in the issue of October 14. Certainly, there is even less justification for the use of the word "blackmail" as a sub-headline, standing

alone and without qualification. See *Las Vegas Sun, Inc. v. Franklin, supra.*

In regard to the *accuracy* of the reporting of what occurred at the City Council meetings, Mrs. Williamson testified that the word "skulduggery" was not used by any speaker at the meeting to whom it was attributed or even by her. She testified that: "I did not use that word. This is a good example of what happens on Tuesday next when the other members of the Editorial Board will read through an article." There is little doubt that the word "skulduggery" was intended to indicate dishonest conduct on the part of Bresler and to hold him up to ridicule and contempt. The word is defined in the *Webster's New International Dictionary*, (Second Ed. 19) as "Trickery; secret or hidden wickedness or practice" and in the *Random House, American College Dictionary* (1961) as "N. U.S., dishonorable proceedings, mean dishonesty or trickery." The jury could properly conclude that the reports of the hearing were not accurately reported and were, also, published with a knowledge of their falsity or with serious doubt of their truthfulness.

3.

The appellants contend that there was insufficient evidence as a matter of law that they published a false and defamatory statement about Mr. Bresler with knowledge that it was false or with reckless disregard of whether or not it was false and that they were entitled to a directed verdict for this reason. We do not agree with this contention.

The case is an extraordinary one in that Mr. Bresler was able to establish from Mr. Skolnik and from several of the witnesses for the appellants, e.g., Mayor Smith, Mrs. Williamson and Mrs. Skolnik, that the appellants did in fact know that the use of the term "blackmail" did import serious criminal conduct on Bresler's part and further that there was nothing which was before the meeting or which happened at the meeting which would justify the use of such a term in regard to Mr. Bresler. It is not surprising, therefore, that

the jury found - as they were required to find under the trial court's charge - that the charge of blackmail was false, and accordingly they could have found that it was known by the appellants to have been false or was published with reckless disregard of whether it was false or not.

The appellants suggest that because they published in the October articles that at each meeting there was one person who expressed the "opposite opinion", i.e., that Bresler was not guilty of blackmail, there was no "unfair comment." In our opinion, however, these statements could indicate that the original use of the term "blackmail" was indeed intended and understood to be used in its sense of importing serous criminal conduct on Bresler's part. As we have indicated, there was evidence from which the jury could and did find that this charge was false, known to be false but was published with actual knowledge of its falsity or with a reckless disregard of whether or not it was false. These facts, in our opinion, distinguish the present case from the cases relied on by the appellants; i.e., *Parker v. Kirkland*, 298 Ill. App. 340, 18 N.E.2d 709 (1939) (involving a statement by counsel for the newspaper before a quasi-judicial body where the charge of blackmail was relevant to the issues); *Bennett v. Seimileer*, 175 Kan. 764, 267 P.2d 926 (1954) (involving a charge that the plaintiff was a "traitor" to his local union which the court held was not slanderous, *per se* in the context used, as not charging the commission of a crime); *Flanagan v. Nicholson Publishing Co.*, 137 La. 587, 68 So. 964 (1915) (involving a charge that the plaintiffs "own union * * * [denounced] him as a traitor" which the court held was not slanderous *per se* in the context used); *Pulvermann v. A. S. Abell Co., supra*, and *St. Amant v. Thompson, supra*. In the latter case, the Supreme Court of the United States, in a case involving the alleged libel of a public official, stated that there must be convincing proof that the appellants "in fact entertained serious doubts as to the truth" of the published statement. It would be difficult to conceive of a case in which there was more "convincing evidence"—the admissions of one of

the appellants and of several of their witnesses—that the appellants did indeed have actual knowledge of the falsity of the charge or, in any event, entertained "serious doubts as to its truth."

In considering the failure of Mrs. Skolnik to check either the court records or with Bresler, himself, by telephone relative to the false charge that various homeowners "had started legal proceedings" against Bresler in regard to construction defects in their homes built by him, the appellants argue that Mrs. Skolnik's failure to check first was at the most negligence and was not a "reckless disregard of the truth" as required by *St. Amant*. In our opinion, the jury could have concluded from the evidence that Mrs. Skolnik's failure in this regard did amount to a "reckless disregard of the truth." In the first place, Mrs. Skolnik is a knowledgeable, educated person with three and one-half years of college education. She is experienced as a reporter for the News Review and she must have known that the report of the actual institution of suits against a builder and developer "for failure to make construction corrections in accordance with county standards" was calculated to result in serious injury to Bresler's standing as a builder and developer, to his reputation as a competent builder and developer and would hold him up to ridicule and contempt in the very area in which he was engaged in building and construction.

Secondly, it is correct, as the appellants point out, that, in *New York Times*, the newspaper was not held to have been guilty of such recklessness as is necessary for a finding of actual malice in regard to a public official (but was only guilty of negligence), in failing to check its own files to discover that the statement published by it was false. In the instant case, however, Mr. Skolnik testified that the News Review had "a general Rule that if you don't know the facts, if there is confusion about the facts, you call the principals involved." He also stated that the News Review had on at least two occasions, telephoned Bresler, himself, to verify certain charges made against him and in

both instances had discovered that the charges were in fact false and unjustified, and they were not published. The jury might well have found that in the light of this established publishing policy and practice as well as the other circumstances already mentioned, the failure by Mrs. Skolnik to verify either in the court records or by a simple telephone call to Bresler the truth of the serious charge of the institution of the suits, amounted to recklessness sufficient for a finding of actual malice.

Then too, in the present case, there were sufficient facts to indicate to the jury, an affirmative hostility, a personal animus, against Bresler and a desire on the part of the publishers of the News Review to injure his reputation and standing in the Greenbelt area through the use of the false charges. The following facts are sufficient to justify such a conclusion by the jury. The headings of the publications, themselves, such as "AN UNETHICAL TRADE", "ANOTHER CRIPPLING BLOW", "BRESLER REPUDIATES COVENANT", "STARTLED AT BRESLER", "BRESLER INFLUENCES", "BRESLER SUITS", "CITY BATTLES BRESLER", many of which were written by Mr. Skolnik himself; the formation of the CFPG legal fund for the express purpose of filing suits against Bresler by Mr. Stern and Mrs. Skolnik, both of whom were members of the staff of the News Review, the soliciting of funds for the CFPG legal fund through the News Review and the solicitation of collectors by Mrs. Skolnik; the misrepresentation to several persons through the paper that the CFPG legal fund was to be used *only* to enjoin the "actions of developers which are contrary to the Greenbelt Master Plan" when in fact the legal fund was used to institute (unsuccessful) damage actions against Bresler amounting to nearly $2,000,000 in claimed damages; the close connection between the Skolniks, Mrs. Bergemann, Mrs. Rosetti and Mr. Herling (those to whom the word "blackmail" was attributed), Mrs. Sucher and Mrs. Williamson (who wrote the articles) and Charles Schwan, the president of GHI and the principal opponent of Bresler on the high school and zoning issues; the opposition of the News

Review to the zoning of Parcels 1 and 2 for townhouses, but with no opposition to the construction of townhouses by GHI, itself; the fact that Bresler was allegedly making a profit from land once owned by GHI but purchased by Bresler; the attacks on Bresler for allegedly repudiating his agreement in regard to the building of a high-rise apartment instead of townhouses but with no corresponding attack upon another builder and developer in the area who violated his agreement to build townhouses instead of garden apartments; and, finally, the attack upon Bresler (who was to be afforded "no more or no less, no worse or no better treatment than any other developer in the City of Greenbelt" according to the testimony of Lewis Bernstein, a witness for the appellants) for allegedly building 12 instead of the "average" of seven units per acre at one end of Charlestowne Village, but remaining silent when the City of Greenbelt approved the Lakeside North development with covenants restricting density to 12 units.

In our opinion, it cannot be said in the present case that there was insufficient evidence (with all reasonable inferences from that evidence) from which a jury could find that the appellants published false and defamatory statements about Mr. Bresler with knowledge that they were false or with reckless disregard of whether or not they were false. The appellants were not entitled to a directed verdict in their favor for this reason and the trial court properly, in our opinion, refused to grant their motion for a directed verdict and for a judgment n.o.v.

4.

We now come to the final contention of the appellants, i.e., that the trial court erred in its charge to the jury in four particulars. These are, (a) by instructing the jury that the constitutional protection was limited to comments relating to Bresler's "official conduct", (b) by instructing that "actual malice" consisted of evil intent, a state of mind best described as spite, hostility or deliberate intention to harm which could be inferred from the language of the publica-

tions in issue, (c) by refusing to instruct in regard to the meaning of "reckless disregard of truth" under the federal constitutional standard, and (d) by instructing that the appellants conceded that the publications "were not true."

It is well settled in Maryland that in considering alleged errors in a charge of the trial court to the jury, we will consider the charge as a whole and will not select, out of the context of the whole charge, individual statements which might, of themselves and out of context, contain inartificial methods of expression or appear to be misleading. *Jones v. Federal Paper Board Co.*, ____ Md. ____, 250 A.2d 653 (1969) (No. 40, Sept. Term, 1968, filed February 25, 1969), and cases therein cited.

It is equally well settled that we will only concern ourselves on appeal with the exceptions to the charge filed by the objecting party at the conclusion of the charge itself. Maryland Rule 554 d and e. *Jones v. Federal Paper Board Co., supra.*

In the present case, the trial court gave a comprehensive and carefully considered charge to the jury.

After advising the jury that the court's instructions in regard to the law were binding upon them, but the findings in regard to the facts were for the jury; that the weight of the evidence is not established by the number of witnesses but by the quality the jury attributed to the testimony; that questions asked by the court should carry no more weight with the jury than those asked by counsel, the trial court then gave the jury the definition of libel as follows:

> "You are instructed that the burden is upon the plaintiff to establish a preponderance of the evidence that the publication imputed to him a crime, or disgraceful, dishonest or immoral conduct or was otherwise injurious to his private character or credit, and if you are unable to conclude from the preponderance of the evidence that the publication bears a meaning ascribed to it by the plaintiff, or if you

find that the evidence is equally balanced on that issue, then your verdict must be for the defendant.

"The law presumes, until the contrary appears, that every person has a good character and has done nothing to forfeit the good opinion of the community. The law regards a good reputation as valuable to its possessor, and the publication of a libel by which a good name is impaired is an injury for which damages may be recovered."

In regard to considering the publication complained of, the trial court stated:

"In considering the publication complained of, you must consider the publication as a whole—the Court would say in this case we are talking about serious, [a series, a] number of publications—and determine the meaning of the publication and how it would be understood by ordinary readers from the entire context thereof with the other facts and circumstances shown by the evidence.

"Where a publication is susceptible of two meanings one of those which would be libelous and the other not, it is up to you to say which of the two meanings would be attributable to it, by those to whom it is addressed or by whom it may be read. In reaching your decision you can consider all the circumstances surrounding the publication, which includes all of the evidence which has been admitted.

"It is no defense that in making the defamatory statement the defendant either repeated or quoted a statement by another. It makes no difference whether a defamatory statement is originated by the defendant or merely repeated by him or it, and I use it, because individual, on the basis of a statement made by it or him.

"You are instructed as a matter of law that one who repeats another's defamatory statement is legally responsible unless the story is true, the repetition

privileged—I will repeat that—unless it is true the repetition is privileged, which I will define for you in a minute what privilege is—or the plaintiff consented to the publication."

In regard to the truth of the publications, the trial court instructed:

"Going to the factor of the truth, there is no contention in this case, it is conceded by the defendant these allegations were not true. That is that Mr. Bresler was guilty of blackmail.

"There is no evidence before you, no contention by the defendant that they were true."

In considering the question of "fair comment", the trial court instructed the jury:

"In matters of public interest, the law recognizes the importance of free discussion and the right to express opinions, comments and criticisms concerning such matters. Thus it accords to the press and the general public the right to comment upon and criticize these matters of public interest freely and openly. But this right to express opinions on matters of public interest is only present where the fact and criticism and comment are drawn are true. It is only insofar as the facts set out by the publisher are true that he would claim the right of free and open criticism of open comment on those facts. Thus at the outset if you find the basis on which the criticism or facts are made are true, then you must not find on the issue of fair comment.

"If, however, you determine that the facts on which the criticism is based are true, then you must decide whether the criticism or expression of opinion complained of was fair. You are instructed that in order for the criticism to be fair comment in the eyes of the law it is not necessary for you to personally agree with it or even the majority of reasonable men would agree with it. It is only necessary the criticism be one which a reasonable man could draw from the fact even though it is not the correct

criticism or opinion of the most reasonable criticism or opinion. Accordingly, if you determine the criticism or opinion in the article complained of was one which an honest person could reach, you must find for the defendant on the issue of fair comment, unless you determine by a preponderance of the evidence that the comment or criticism did not actually represent the opinion of the author, but instead was published with malice or a reckless disregard of whether it was true or false.

"The Court would here emphasize that the newspaper or a publisher has a right and responsibility to attend meetings, to listen to what is going on, and to rely upon people which it knows or has very good grounds to believe are responsible citizens. And such statements repeated and/or published, unless with actual malice, or knowledge that they are false, reckless disregard for whether they are true or false, is not libel.

"The law recognizes the importance of free discussion and criticism and matters of public interest to the extent that it grants immunity even with respect to the publication of foolish and prejudicial criticism if they are not published with malice, knowledge of their not being true, it is knowledge they are false, or reckless disregard of whether they are true or false. The right of comment or criticism that has been explained to you is the same whether the defendant is a newspaper or a member of the public generally.

"If you find that the publication complained of relates to a matter of interest to one or both of the parties to the publication or communication and that the means of publication was reasonably adapted to the protection of that interest, you are instructed that the publication is qualifiedly privileged and your verdict should be for the defendant unless you find that the publication was made with actual malice, knowledge of its falsity, or reckless disregard of whether it was true or false."

The trial court then gave examples of absolute and qualified privileges and told the jury:

> "You are instructed the publication is qualified[ly] privilege[d] and your verdict should be for the defendant unless you find again the publication was with actual malice, knowledge of its being false or reckless disregard of whether it was true or false."

The trial court then defined "malice" quoting from *Black's Law Dictionary* as follows:

> "* * * the Court would indicate that Black's Law Dictionary indicates malice as follows: the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances of law would imply an evil intent."

An additional instruction was then given on the burden of proof on the plaintiff, as follows:

> "In addition thereto, the Court has instructed you that if you determine the defense or qualified privilege asserted by the defense applies to this case, that is fair comment privilege, the plaintiff must then prove by a preponderance of the evidence that the defendant published the article complained of with actual malice toward the plaintiff. Therefore, the Court will now again define for you another indication of what malice is. Actual malice involves the state of mind that the defendant, best described as spite, hostility or deliberate intention to harm. Further, although honest indignation and strong words are not evidence of express malice, or actual malice, actual malice may also be present in the eyes of the law if you determine by a preponderance of the evidence that the defendant's conduct, published in the article complained of constituted malice, reckless disregard of whether they are true or false.
>
> * * *
>
> "* * * in determining whether there was actual malice on the part of the defendant, in the publication of the articles complained of, you may consider all the

relevant evidence in the case, including the character of publication, the circumstances which inspired its publication, the presence or absence of a reasonable basis for making the statement, and the presence or absence of provocation.

"With respect to your consideration of presence of actual malice on the part of defendant, you may infer its presence from the language or circumstances of the publication, but this may be done only if the character of the publication is so excessive, intemperate, unreasonable and abusive as to defy any other reasonable conclusion than that the defendant was moved by actual malice toward the plaintiff."

The trial court then instructed in regard to compensatory, nominal and punitive or exemplary damages. In regard to punitive damages, the trial court told the jury:

"Punitive damages are claimed in this case.

* * *

"Punitive damages sometimes called exemplary or vindictive damages, may, in certain circumstances, be awarded by you, in addition to the verdict for compensatory or nominal damages. Punitive damages do not partake of compensation to an injured plaintiff. Rather, the law permits juries in civil cases to assess punitive damages against the defendant as punishment for outrageous conduct and as [a] deterrent to others to refrain from engaging in such conduct.

"Punitive damages may be assessed against an individual defendant when the publication of a libel was done with actual malice toward the plaintiff, or when the defendant acted with recklessness or wanton indifference to the rights of the plaintiff.

"In deciding whether in the publication complained of the defendant was acting with actual malice toward the plaintiff, you should consider all the circumstances and evidence of the case. You should consider the intent with which the matter was published, the motives of the defendant in publishing the matter, the presence or absence of provocation for the

publication, the presence or absence of reasonable grounds for making the statement. You shall also consider the manner in which the defendant received the information on which the publication was based, whether the defendant exercised an honest judgment or whether the publication was based on information received from persons whom the defendant believed to be reliable persons. If after weighing and considering these facts you are convinced the defendant acted with actual malice toward the plaintiff, then you may, I am not saying you shall, you may, assess punitive damages against the defendant. Whether to do so, even if you find actual malice, is within your sound discretion; the law does not require you to assess punitive damages. If you decide to assess punitive damages the amount of such damages is left to your good judgment."

In regard to blackmail, the trial court gave the following definition:

"Black's Law Dictionary defines [blackmail as] the extortion of money by threats or overtures toward criminal prosecution or the destruction of a man's reputation or social standing."

The trial court further told the jury:

"* * * you must find, as I have told you the burden of proof is on the plaintiff to prove by a preponderance of evidence the allegation of libel. With the law that I have given you you are obligated to find malice, knowledge of the falsity, reckless disregard of what is true or false in order to find [for] the plaintiff. And if you find these elements then you may find for the plaintiff. Otherwise, you will find for the defendant."

After hearing the exceptions of counsel for the defendants to the charge (counsel for the plaintiff made no exceptions), the trial court gave the following additional instruction:

"The Court will give you one additional instruction as a matter of law, that in a suit for libel you have a treating differently of different people. A

public official or a public figure, the law permits under the question of privilege or fair comment a wider latitude. In other words, in matters that are of general public interest, [as] the articles complained of were, if you find by a preponderance of the evidence was public activities, there is a constitutional protection for publication of matters regarding a public official or a public figure. There is no denial in this case Mr. Bresler was not a member of House of Delegates and a candidate for Comptroller of the State of Maryland when the last article was published. And the plaintiff cannot recover unless you find, as I say again, by a preponderance of the evidence, that the articles were published with actual malice, knowledge of their being false, or reckless disregard of whether they were true or not."

After further objection by counsel for the defendants, the trial court gave a further additional instruction as follows:

"Very well, Mr. Foreman and gentlemen of the jury. The Court added to my original instruction regarding public officials, will include public figure, because in the manner which it was done I am of the opinion there may be some misconception of exactly what I meant with the original instructions as to public officials and public figures.

"I am going to give you the additional instruction, which is the law on this subject. There is no contention here that the statements regarding blackmail were true. The Constitutional guarantee requires a rule that prohibits a public official or public figure from recovering damages for defamatory falsehood relating to his official conduct unless he proves that the statements were made with actual malice, that is with knowledge that it was false or with reckless disregard of whether it was false or not. The same thing is said in the same vein, definition of malice is constitutionally insufficient where discussion of public affairs is concerned unless the plaintiff establishes that the utterances were false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true."

Counsel for the defendants (appellants) then made the following objections:

> "I renew my objection, Your Honor, in view of the prior instructions that have gone before this, in which malice is adverted to as involving hostility and this should be made clear to the jury that evidence of evil motive, ill will, hostility, does not constitute malice within the definition of the Constitution. And secondly, Your Honor, I object to the construction on the ground that it does not make it clear that Constitutional protection to comment upon public figures with respect to their public - their activities in the public interest as opposed to their official conduct because they are in the official - they have no official duties and are not officials."

(a)

The appellants contend, first of all, that the trial judge erred in instructing the jury that the constitutional protection was limited to comments relating to Mr. Bresler's "official conduct". The appellants base their contention on the portion of the charge given in the second additional instruction in which the trial court stated in part, "The Constitutional guarantee requires a rule that prohibits *a public official or public figure* from recovering damages for defamatory falsehood relating to *his official conduct* unless he proves that the statements were made with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was false or not." (Emphasis supplied) Earlier in the charge, the trial court had instructed the jury, "A *public official or a public figure*, the law permits under the question of privilege or fair comment a wider latitude. In other words, *in matters that are of general public interest*, [as] the articles complained of were, if you find by a preponderance of the evidence was public activities, there is a constitutional protection for publication of matters regarding *a public official or public figure*. There is no denial in this case that Mr. Bresler was not a member of House of Delegates and a candidate for Comptroller of the State of

Maryland when the last article was published. And the *plaintiff cannot recover* unless you find, as I say again, by a preponderance of the evidence, that the articles were published *with actual malice, knowledge of their being false, or reckless disregard of whether they were true or not.*" (Emphasis supplied) The trial court further stated: "In reference to the last instruction I gave you, with reference to his official conduct *or words* as a public official or a public figure."

The trial court, in effect, in the entire charge clearly instructed the jury that in order for the plaintiff to recover it must find by a preponderance of the evidence that the *New York Times* test had been established for *both* Bresler's activities as a public official and as a public figure. We have indicated that this was a *more favorable* instruction for the defendants than they were entitled to have received in light of the factual circumstances. It was also probably more favorable to the defendants than the decision of the Supreme Court in *Butts* justified for "public figures."

In *New York Times*, Mr. Justice Brennan, for the Supreme Court, articulated the rule in regard to "public officials" as follows:

> "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is with knowledge that it was false or with reckless disregard of whether it was false, or not." (376 U.S. at 279-80, 84 S.Ct. at 726, 11 L.Ed.2d at 706)

In the concurring opinion of Mr. Justice Goldberg, concurred in by Mr. Justice Douglas, which advocated an even more stringent constitutional guarantee than the majority, it was pointed out that:

> "This is not to say that the Constitution protects defamatory statements directed against the private conduct of a public official or a private citizen." (376 U.S. at 301, 84 S.Ct. at 737, 11 L.Ed.2d at 721)

In *Butts* and *Walker*, federal constitutional protection was extended to publications in regard to the activities of "public figures." The opinion of the Court in *Butts* and *Walker* was written by Mr. Justice Harlan, in which Mr. Justice Clark, Mr. Justice Stewart and Mr. Justice Fortas joined. These four justices were of the opinion that the federal rule in regard to "public figures" was not as vigorous as the rule enunciated in *New York Times* in regard to public officials. Mr. Justice Harlan stated, in part, as follows:

> "In *Time, Inc. v. Hill, supra,* 385 U.S., at 390, 87 S.Ct. at 543 we counseled against 'blind application of *New York Times Co. v. Sullivan*' and considered 'the factors which arise in the particular context.' Here we must undertake a parallel evaluation." (388 U.S. at 148, 87 S.Ct. at 1988, 18 L.Ed.2d at 1107)
>
> * * *
>
> "* * * the rigorous federal requirements of *New York Times* are not the only appropriate accommodation of the conflicting interests at stake. We consider and would hold that a 'public figure' who is not a public official may also recover damages for a defamatory falsehood whose substance makes substantial danger to reputation apparent, *on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers.*" (Emphasis supplied) (388 U.S. at 155, 87 S.Ct. at 1991, 18 L.Ed.2d at 1111)
>
> * * *
>
> "Where a publishers' departure from standards of press responsibility is severe enough to strip from him the constitutional protection our decision acknowledges, *we think it entirely proper for the State to act not only for the protection of the individual injured but to safeguard all those similarly situated against like abuse.*" (Emphasis supplied) (388 U.S. at 161, 87 S.Ct. at 1994, 18 L.Ed.2d at 1114)

Mr. Chief Justice Warren, however, whose concurrence made up the majority of five, was of the opinion that the *New York Times* rule in regard to "public officials" should be applied in full vigor, to "public figures."

In view of the close decision in the Supreme Court, it is not entirely clear what the correct rule is in regard to "public figures", but, as we have already indicated, it is of no importance in the present case because the trial court applied the *New York Times* rule to the publications relating to Bresler either as a "public official" or as a "public figure" adopting, in effect, the position of the Chief Justice in *Butts* and *Walker*.

The trial court instructed the jury a number of times that to find for the plaintiff the jury must find, by a preponderance of the evidence that the publication was with actual malice, knowledge of its falsity or reckless disregard of whether it was true or not—substantially in the language of the *New York Times* test. Indeed in several instances the test was broader than that of *New York Times* as it was not always limited to a "public official" or a "public figure." This however, was favorable to the defendants and injurious, if at all to the plaintiff, and, as we have stated, the appellants cannot complain of this.

As Mr. Justice Harland stated in *Butts:*

> "The impact of a jury instruction 'is not to be ascertained by merely considering isolated statements but by taking into view all the instructions given and the tendencies of the proof in the case to which they could possibly be applied.' *Seaboard Air Line R. Co. v. Padgett*, 236 U.S. 668, 672, 35 S.Ct. 481, 482, 59 L.Ed. 777." (388 U.S. at 156-57, 87 S.Ct. at 1992, 18 L.Ed.2d at 1112)

This is in accord with the usual Maryland rule as we have already stated. In our opinion, considering the charge as a whole, the jury understood that it was required to find from a preponderance of the evidence that the *New York Times* rule applied to the activities of Bresler both as a public offi-

cial and as a public figure. We find no error in the charge in this regard of which the appellants can complain.

(b)

The appellants next contend that the trial court erred in instructing the jury that actual "malice" consisted of evil intent, a state of mind best described as spite, hostility or deliberate intent to harm which could be inferred from the language of the publications in issue.

As we have already seen the trial court did define malice as the "intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances of the law would imply an evil intent" and further that "actual malice involves the state of mind * * * [of] the defendant, best described as spite, hostility or deliberate intention to harm." The trial court also stated that the jury might infer the presence of actual malice "from the language or circumstances of the publication", but added this quite restrictive instruction "but this may be done only if the character of the publication is so excessive, intemperate, unreasonable or abusive as to defy any other reasonable conclusion that the defendant was moved by actual malice toward the plaintiff."

Here again, the appellants separate one aspect of the charge from the charge as a whole and claim that this was error under the decision in *Rosenblatt v. Baer, supra* and *Beckley Newspaper v. Hanks, supra,* as well as *Washington Post Co. v. Keogh,* 365 F.2d 965 (D.C. Cir. 1966), *cert. denied,* 385 U.S. 1011 (1967).

The appellants overlook, however, that in a libel action in which punitive damages are sought, it was proper to define "actual malice" as requiring a finding of ill will, spite, hostility and a deliberate intention to harm." Later in the charge the trial judge indicated that if the jury found that the libel was done with "actual malice" toward the plaintiff "or when the defendant acted with recklessness or wanton indifference to the rights of the plaintiff", the jury could assess punitive damages.

In *Butts*, the opinion of the Court written by Mr. Justice Harlan, indicates that the State law in regard to punitive damages is to be considered and applied. He stated, for the Supreme Court:

> "Moreover, punitive damages require a finding of 'ill will' under general libel law and it is not unjust that a publisher be forced to pay for the 'venting of his spleen,' in a manner which does not meet even the minimum standards required for constitutional protection." (388 U.S. at 161, 87 S.Ct. at 1994, 18 L. Ed.2d at 1114)

See also *Snyder v. Fulton*, 34 Md. 128, 138, 6 Am. R. 314, 321 (1871).

As we have indicated, when the trial court instructed the jury in regard to the constitutional protection in regard to comment upon the activities of Mr. Bresler as a "public official" or as a "public figure", it stated the formula in *New York Times* as the applicable test and limited the jury to a finding based on that test. This was done several times, the final instruction being made after considering the objections of counsel for the defendants, giving the exact language from *New York Times*.

In our opinion, taking the charge as a whole and considering the last instruction given by the trial court, the jury was instructed and must be assumed to have understood that it must find that the publications in issue were made "with knowledge that it was false or with reckless disregard of whether it was false or true."

In our opinion, the appellants suffered no prejudice from the instruction, considered as a whole, in this regard. If there was any prejudice, it was suffered by the plaintiff, not by the defendants.

(c)

The appellants next argue that the trial court erred in its instructions by refusing to instruct in regard to the meaning of "reckless disregard of truth" under the federal constitutional standard.

In their Request to Charge No. 4, the defendants requested an instruction that "Reckless disregard of the truth is more than mere negligence on the part of the newspaper. The plaintiff must show by a preponderance of the evidence that the defendants published defamatory false statements with a high degree of awareness of their probable falsity." This instruction was requested in connection with the article in the June 9, 1966 issue of the News Review written jointly by Mr. and Mrs. Skolnik.

In our opinion, the trial court was under no obligation to give a further definition of the phrase "reckless disregard of the truth" as the phrase is sufficiently definite in itself and sufficiently presented the issue to the jury. The charge, taken as a whole, was in our opinion sufficient in this regard. As we have heretofore indicated, technical precision of individual words is not required in instructions to the jury, and if the charge as a whole fairly presents the issue to the jury, there is no prejudicial error. *Curtis Publishing Co. v. Butts,* 388 U.S. at 156-7, 87 S.Ct. at 1992, 18 L.Ed.2d at 1112; *Jones v. Federal Paper Board Co. supra.*

(d)

Finally, the appellants contend that the trial court erred in its instructions to the jury by instructing that the defendants conceded that the publications "were not true." As already stated, there was no plea of justification, i.e., that the publications were true. Moreover, counsel for the defendants stated to the trial court:

> "What I am saying is we don't contend that the plaintiff committed blackmail, that is all. We don't intend [contend] the plaintiff committed the crime of blackmail."

The trial court instructed the jury:

> "Going to the factor of the truth, there is no contention in this case, it is conceded by the defendant these allegations were not true. That is that Mr. Bresler was guilty of blackmail.

"There is no evidence before you, no contention by the defendant that they were true."

The appellants contend that the term "blackmail" in the context in which it was used was an expression of opinion regarding a public proposal. The subheading "Blackmail", however, was not used as an expression of opinion by any one other than the publishers, themselves, and had nothing whatever to do with any "public" proposal. As we have indicated the charge of blackmail was false, the appellants knew that a charge of blackmail was false, but they published it with such knowledge and emphasized the charge in a subheading with block type.

The jury could well have found that the false and defamatory statement was published with a "reckless disregard of truth" and lost any qualified privilege it might otherwise have had. Cf. *Stevenson v. Baltimore Baseball Club*, 250 Md. 482, 243 A.2d 533 (1968).

In any event, we do not find that the appellants objected to this portion of the charge and this alleged error is not before us for consideration. Maryland Rule 554 d and e; *Jones v. Federal Paper Board Co., supra.*

Finding no prejudicial error in the rulings and charge of the trial court, the judgment will be affirmed.

JUDGMENT AFFIRMED, THE APPELLANTS TO PAY THE COSTS.

Supreme Court of the United States

No. 413 ----, October Term, 19 69

Greenbelt Cooperative Publishing Association, Inc., et al.,

Petitioners,

v.

Charles S. Bresler

Order allowing certiorari. Filed October 20 ----, 19 69.

The petition herein for a writ of certiorari to the Supreme Court of the State of Maryland of Appeals is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

JUL 3 1969

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners

v.

CHARLES S. BRESLER,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

ROGER A. CLARK
1730 K Street, N.W.
Washington, D.C. 20006
Attorney for Petitioners

Washington, D. C. · THIEL PRESS · 202 · 393-0625

INDEX

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT	3
REASONS FOR GRANTING THE WRIT	13
CONCLUSION	19
APPENDIX A - Opinion and Judgment Below	A-1
APPENDIX B - Constitutional Provisions	B-1
APPENDIX C - Excerpts From Newspaper Articles	C-1

CITATIONS

Cases:

Beckley Newspapers Corp. v. Hanks, 389 U.S. 81 (1967) . 13, 14, 16

Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967) 4

Garrison v. Louisiana, 379 U.S. 64 (1964) 13, 14, 16, 17

Henry v. Collins, 380 U.S. 356 (1965) 13, 16

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 2, 11, 13, 14, 15, 18

Pauling v. Globe-Democrat Publishing Co., 362 F.2d 188 (8th Cir. 1966), *cert. denied* 388 U.S. 909 (1967) 16

Rosenblatt v. Baer, 383 U.S. 75 (1966) 11, 16

St. Amant v. Thompson, 390 U.S. 727 (1968) 14, 15

Constitutional Provisions and Statutes:

U.S. Constitution, First Amendment 3

U.S. Constitution, Fourteenth Amendment 3

28 U.S.C., Section 1257(3) 2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No.

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners

v.

CHARLES S. BRESLER,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of Maryland entered on May 2, 1969, in the above-entitled action for alleged libel.

OPINION BELOW

The opinion of the Court of Appeals, printed in Appendix A hereto, is reported in ___ Md. ___, 252 A.2d 755. The instructions of the trial court are printed in full in the Joint Record Extract (E. 188-210).

JURISDICTION

The judgment of the Court of Appeals was entered on May 2, 1969. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3). In the trial court, petitioners objected on First Amendment grounds to the sufficiency of the evidence as a matter of law in motions for a directed verdict and for judgment N.O.V. (E. 9-15, 116-9, 186-7) and to the instructions complained of in this Court (E. 8-9, 199-210). These objections were renewed in the Court of Appeals and are discussed in its opinion at App. A, pp. 36-40 and 53-55, respectively.

QUESTIONS PRESENTED

The questions presented all relate to the meaning and application of the rule of constitutional protection, first announced in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), that prohibits a public official or a public figure from recovering damages for a defamatory falsehood relating to his official or public conduct unless he proves that the statement was made "with 'actual malice'—that is with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 279-80.

1. Whether knowing falsity or reckless disregard of the truth under the *New York Times* rule can be established by extracting a word out of context and ascribing to it a meaning wholly foreign to the article in which it appears.

2. Whether, under the *New York Times* rule, a libel judgment can be predicated on an expression of opinion regarding a public proposal requesting governmental action where the proposal to which the opinion clearly referred is accurately described in the article in issue.

3. Whether the failure to further verify information obtained from a number of apparently reliable sources constitutes sufficient evidence of reckless disregard of the truth under the *New York Times* standard.

4. Whether there is sufficient evidence as a matter of law to establish knowing falsity or reckless disregard of the truth.

5. Whether, in a libel case to which the *New York Times* rule applies, the trial court erred:

(a) By instructing the jury that "actual malice" which would permit recovery consists of "a state of mind . . . best described as spite, hostility, or deliberate intention to harm" that could be inferred from the language of the publication in issue; and

(b) By refusing to instruct that "[r]eckless disregard of the truth is more than mere negligence on the part of the newspaper . . . [p]laintiff must show by a preponderance of the evidence that the defendants published defamatory false statements with a high degree of awareness of their probable falsity."

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the First and Fourteenth Amendments to the United States Constitution, the texts of which are reprinted in Appendix B.

STATEMENT

This action for alleged libel stems from a heated controversy over land development in the City of Greenbelt, Maryland. Petitioners are publishers of the Greenbelt News Review, a weekly newspaper staffed on a part-time basis by interested residents. Respondent Bresler is a major builder-developer in Greenbelt who has had numerous dealings with the Greenbelt City Council seeking approval for higher density zoning for various tracts of land. During the period involved, Bresler was also a member of the Maryland House

of Delegates and later a candidate for Comptroller of the State.

The declaration challenged several articles in the News Review which contained criticism of Bresler's dealings with the City Council and with other governmental agencies regarding zoning requests and land development matters. Respondent's counsel conceded in his opening statement that Bresler was a public figure in Greenbelt and it was assumed throughout the trial that the *New York Times* rule was applicable to the articles in issue. This same assumption is accepted, albeit reluctantly, by the Court of Appeals (App. A, pp. 32-3).[1]

Bresler relied principally on two articles which accurately report public debate at two City Council meetings convened to consider a zoning proposal made by him to the Council. The pertinent parts of the first article, dated October 14, 1965, are as follows:

SCHOOL SITE STIRS UP COUNCIL
REZONING DEAL OFFER DEBATED

By Dorothy Sucher

Delay in construction of a new Greenbelt high school is the lever by which a local developer is pressuring the city to endorse his bid for higher density rezoning of two large tracts of land; so citizens heard at a well-attended special meeting of the City Council on Monday night, Oct. 11.

---

[1] This assumption is clearly correct. Bresler's dealings with city officials directly affected how a substantial portion of Greenbelt was to be developed. The interest of Greenbelt citizens in this development certainly equals the general public interest in college football present in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967). Bresler's "views and actions" with respect to this public issue were "of as much concern to the citizen as the attitudes and behavior of 'public officials' with respect to the same issues and events." *Id.* at 162. Moreover, Bresler, like General Walker, thrust himself into the "vortex" of a public controversy when he sought out city officials to solicit their official support for his controversial development plans. *Id.* at 146.

For the past nine months, the Board of Education has been trying to acquire land owned by Consolidated Syndicates, Inc. (Charles Bresler-Theodore Lerner), for a high school site.

* * *

Some time ago, it became known that the developer would agree on the price, provided the city would help him obtain higher density rezoning for two of his tracts (Parcels 1 and 2, totaling 230 acres) near the center of Greenbelt. If the city refused, he threatened to delay the school site acquisition as long as possible through the courts.

* * *

Blackmail

"It seems that this is a slight case of blackmail," commented Mrs. Marjorie Bergemann on Monday night, and the word was echoed by many speakers from the audience.

Councilman David Champion, however, denied that it was "blackmail," explaining that he would rather "refer to it (i.e., the negotiations–Ed.) as a two-way street."

Speaking from the floor, Gerald Gough, commented: "Everyone knows there's a need for a school–just walk through the halls of High Point. The developer knows there's a need and says, 'we'll meet your need if you meet our need.' In my opinion, it's highly unethical."

* * *

Among the parents who spoke was Mrs. Joseph Rosetti, who said: "I have several children going into high school, but I would rather adhere to the Greenbelt Master Plan than overcrowd the town with dense development. I would stand for my children's discomfort, rather than give in to a blackmailing scheme." (E. 211-2)

The pertinent parts of the second article, dated October 21, 1965, are as follows:

COUNCIL REJECTS BY 4-1 HIGH SCHOOL SITE DEAL

By Mary Lou Williamson

More than 150 citizens came to hear how the new City Council would respond to pressure by a local developer for a higher density zoning on a large tract of land in exchange for uncontested consummation of the sale of a Greenbelt senior high school site to the Board of Education at the Council meeting Monday night.

Council sat quietly listening for more than an hour to citizen statements before voting to reject the proposal (4-1) with Councilman Dave Champion dissenting.

* * *

A procession of citizens took the floor to make impassioned speeches–some from prepared texts, some extemporaneously. The mayor occasionally had to caution them to refrain from engaging in personalities.

Albert Herling suggested skulduggery in the September court postponement. Although he praised most of the City Manager's report, he criticized the section entitled "Risks and Conclusions," saying they appeared negative in the extreme. He suggested a list of positive steps that council ought to take: 1) fight Bresler's "blackmail"; 2) make clear to the Board of Education–no deals; 3) make clear to the District Council (zoning authority) unanimous opposition to the requested R-30 zoning; and 4) seek the swiftest possible court settlement.

* * *

Pilski asked if anyone in the audience cared to speak in support of Bresler's proposal.

Only James Martin took the floor. He suggested that Bresler's action was not "blackmail" but the legitimate advance of his rights to develop his land. Martin suggested, by the way of example, that GHI's long-range planning committee had been doing much the same thing some months ago. He

> alleged that the density of the "frame homes (GHI) is far more atrocious than anything Bresler's considering." (E. 216-8)

The opinion of the Court of Appeals rests squarely on the incredible proposition that these articles charge Bresler with the crime of blackmail.[2] Thus, the court's central and critical finding is that "[t]he charging of Mr. Bresler with having committed blackmail could be found by the jury (as it was) that he was charged with the commission of a crime." (App. A, p. 27)[3]

With this interpretation of the articles as its premise, the court further finds "convincing evidence" sufficient to overcome the constitutional protection based solely on the following "admissions" by petitioners' witnesses:

1. the word blackmail taken out of context could charge the commission of a crime, and

2. there was no evidence uncovered at the public meeting that the respondent committed the crime of blackmail (App. A, pp. 34, 36-8).

Thus, the court concludes, on the basis of this testimony alone that: "It would be difficult to conceive of a case in which there was more 'convincing evidence'—the admissions

---

[2]The court also stated that the second article was not accurate because the word "skulduggery" was not a direct quote of any speaker at the meeting. The uncontradicted testimony, however, is that it was a fair and accurate condensation of Mr. Herling's remarks concerning official action taken by the School Board in postponing its condemnation action against respondent (E. 42-3, 152-3, 162-3).

[3]It is highly improbable that the jury in fact made such a finding since the trial court defined blackmail in its instruction as "the extortion of money by threats or overtures toward criminal prosecution or the destruction of a man's reputation or social standing." (E. 196). The jury is much more likely to have concluded from the clearly erroneous instructions on actual malice, see *infra*, pp. 10-11, that the term blackmail was an "excessive" or "intemperate" opinion published with "hostility" toward respondent.

of one of the appellants and of several of their witnesses—that the appellants did indeed have actual knowledge of the falsity of the charge or, in any event, entertained 'serious doubts as to its truth.'" (App. A, pp. 37-8)[4]

Needless to say, Bresler was unable to identify a single person who understood the articles as charging him with the crime of blackmail nor was he able to explain how he himself arrived at that interpretation (E. 114-6). Bresler did not even complain to the News Review regarding the articles until he filed this action some nine months later when he was in the midst of his campaign for State Comptroller and the News Review had begun to accurately criticize his misrepresentations to the City Council in connection with another transaction.

---

[4]The testimony clearly establishes that the term "blackmail" was understood at the meetings and by the News Review staff not in the criminal sense but in the colloquial sense to mean that Bresler was attempting to coerce the City into accepting his zoning proposal by threatening to hinder the City in obtaining the school site which it desired. Thus, Mr. Skolnik who, along with the other members of the editorial board, reviewed the articles prior to their publication testified:

> We never—all I can say again is that we were viewing this as a description, a colorful description, what was going on at that time. We never looked at it as a description of criminal blackmail. (E. 33)
>
> * * *
>
> I think that the word was used to indicate a situation where the developer was using two pieces of ground as a lever to get a higher density to one piece of land in exchange for something the city needed. (E. 34)

Mrs. Sucher, the reporter who wrote the first article, testified why she did not interpret the article as charging the crime of blackmail:

> Well, the crime of blackmail—my knowledge of the crime of blackmail, I am afraid is really from mystery stories, but I think of this being extorted money by threatening to tell something you know and there was nothing like that. I mean they couldn't have meant that. (E. 165)

Bresler also complained of an article dated June 9, 1966, entitled "Charles Bresler To Run For State Comptroller" which reviewed the status of his land dealings in the community (E. 222-3). Respondent claimed the following statement was false:

> "Reportedly, a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards."

Bresler maintained that no suits had been filed against him personally.[5] The reporter was told by a number of homeowners in the respective subdivisions, many of whom were personally known to her, that they had consulted their lawyers seeking redress and had filed complaints with county authorities regarding construction defects in their homes. All of the homeowners identified Bresler as the builder against whom they were complaining (E. 172-5).

The Court of Appeals concluded that the jury might well have found that "the failure by Mrs. Skolnik to verify either in the court records or by a simple telephone call to Bresler the truth of the serious charge of the institution of the suits, amounted to recklessness sufficient for a finding of actual malice." (App. A, p. 39)[6] The Court of Appeals further approved the trial court's refusal to give the following instruction requested by petitioners:

> "Reckless disregard of the truth is more than mere negligence on the part of the newspaper. The plaintiff must show by a preponderance of the evidence that the defendants published defamatory

---

[5] At least one homeowner suit had actually been filed and three additional suits were subsequently filed against the respective development corporations in which Bresler was a principal (E. 19, 59).

[6] The trial court accorded little weight to this article in denying petitioners' motions for a directed verdict. Thus, the court stated, "The allegations on the article on the Comptroller [don't] bother me too much." (E. 186)

> false statements with a high degree of awareness of their probable falsity." (E. 8-9)

The Court of Appeals held that "the trial court was under no obligation to give a further definition of the phrase 'reckless disregard of the truth' as the phrase is sufficiently definite in itself and sufficiently presented the issue to the jury". (App. A, p. 55)

The other articles in issue were given little attention at the trial,[7] and there was no evidence that the statements complained of were factually incorrect. Substantially all of the remaining evidence was devoted to showing that petitioners and many of the persons quoted in the articles in issue were hostile to Bresler because they had strongly opposed his land development activities on other occasions.

Although petitioners requested instructions limited to the constitutional standard of actual malice (E. 8-9), the trial court repeatedly instructed the jury that Bresler could recover if he showed actual malice, which it defined as follows:

> Now having given you as a basis–definition in each of these principles, the word malice–and the Court feels obligated to define that word for you–the Court would indicate that Black's Law Dictionary indicates malice as follows: the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances of the law would imply an evil intent.
>
> In addition thereto, the Court has instructed you that if you determine the defense of qualified privilege asserted by the defense applies to this case, that is fair comment privilege, the plaintiff must then prove by a preponderance of the evidence that the

---

[7]For example, the letter to the editor describing Bresler's school site zoning proposal as "An Unethical Trade," referred to by the Court of Appeals at App. A, pp. 7-8, 30 and 39, was not even mentioned at the trial.

> defendant published the article complained of with actual malice toward the plaintiff. Therefore, the Court will now again define for you another indication of what malice is. Actual malice involves the state of mind that [sic] the defendant, best described as spite, hostility or deliberate intention to harm. (E. 192-3)

The trial court further instructed that "actual malice" as so defined could be inferred "from the language or circumstances of the publication . . . if the character of the publication is so excessive, intemperate, unreasonable and abusive as to defy any other reasonable conclusion than that the defendant was moved by actual malice toward the plaintiff". (E. 194)

The Court of Appeals held that this definition of actual malice—even though given in connection with the defense of fair comment and the right to report on a public meeting—could nevertheless properly be considered by the jury on the issue of punitive damages (App. A. p. 53). The Court of Appeals further held that the impact of the instructions was later corrected by the following instruction based on incomplete excerpts from *New York Times* and *Rosenblatt v. Baer*,[8] which the trial court thought "seem to disagree" as to the proper definition of actual malice (E. 207-9):

> There is no contention here that the statements regarding blackmail were true.[9] The Constitutional guarantee requires a rule that prohibits a public official or public figure from recovering damages for defamatory falsehood relating to his official conduct unless he proves that the statements were

---

[8] 376 U.S. 254, 279-80; 383 U.S. 75, 84 (1966).

[9] This statement clearly undercuts the constitutional instruction by making it appear that petitioners conceded the falsity of the articles. The trial court previously instructed that petitioners' failure to specially plead truth as an affirmative defense was a concession that the "allegations [of blackmail] were not true". (E. 190)

made with actual malice, that is with knowledge that it was false or with reckless disregard of whether it was false or not. The same thing is said in the same vein, definition of malice is constitutionally insufficient where discussion of public affairs is concerned unless the plaintiff establishes that the utterances were false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true. (E. 209)

The trial court specifically refused, however, to instruct that its previous references to actual malice as consisting of "spite," "hostility" or "deliberate intention to harm" were inapplicable under the constitutional standard (E. 208, 210). Moreover, it is clear from the following colloquy with counsel that the trial court intended to instruct the jury that the articles were actionable upon a showing of actual malice as it had previously defined it:

MR. CLARK: That statement does not make it clear to the jury that under the constitution actual malice is limited to knowledge of the truth or reckless disregard of the truth.

* * *

THE COURT: The Court will not agree with you . . . . I don't think that was the intention. I think there were three elements in other Supreme Court cases on this particular subject, which says with actual malice or knowledge of the statement being false or a reckless disregard for whether it is true or false. And I don't think the Court intended to use those two phrases as a definition of malice. Maybe we will find out from this case which they meant . . . *I am saying actual malice is one thing, knowing that the statement was false is Item 2 and a reckless disregard of whether it is true or false is Item 3.* (Emphasis added) (E. 201-2)

Although Bresler admittedly suffered no pecuniary loss and offered no witnesses to show injury to his reputation, judgment was entered on a jury verdict for $5,000 compensatory and $12,500 punitive damages.

REASONS FOR GRANTING THE WRIT

The decision below is directly contrary to the holdings of this Court in *New York Times* and subsequent cases in at least six major respects, each of which, if the decision is allowed to stand, will cast serious doubt upon the future credibility of the *New York Times* rule as an important safeguard to freedom of the press.

1. The constitutional protection applicable to criticism of a public act of a person who was both a public official and a public figure is completely undermined by extracting the word "blackmail" out of context and ascribing to it a meaning wholly foreign to the article in which it appears. Bresler's proposal to which the word "blackmail" clearly referred was accurately described in the articles in issue. The nature of the proposal and the very fact it was publicly made completely negate the proposition that the articles could be read as charging the crime of blackmail. To hold that the jury could, nevertheless, find not only that the articles charge the crime of blackmail, but also that petitioners should have known this and therefore acted with actual malice, amounts to nothing less than a mockery of the *New York Times* rule.

2. To base a substantial libel judgment on an accurate report of such a clear expression of opinion uttered during public debate regarding a proposal for government action equally contravenes our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open . . . ." *New York Times Co. v. Sullivan*, 376 U.S. at 270. This Court has repeatedly recognized that public debate frequently entails sharply stated views, the expression of which must be protected if the debate itself is to be encouraged. *Ibid.*, *Garrison v. Louisiana*, 379 U.S. 64 (1964); *Henry v. Collins*, 380 U.S. 356 (1965); *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81 (1967). The articles in issue are no more intemperate or excessive than those that appear regularly in newspapers throughout the country in connection with hotly contested

public issues. To cite but a few of the recent examples from major newspapers which are collected in Appendix C, the word "blackmail" has been used to describe Representative Natcher's refusal to authorize subway funds without highway construction in the District of Columbia (The Washington Post, July 22, 1969 and The Evening Star, July 22, 1969); a religious leader's statement that Conservative Jews who support Israel have a right to influence its religious policies (New York Times, October 27, 1968); Representative Wilbur Mills' attempt to condition a tax increase on a reduction in government spending (The Baltimore Sun, May 4, 1968); a civil rights leader's statement that Negroes should control businesses in the ghetto (The Evening Star, May 2, 1968); and Senator Fulbright's effort to force a change in Vietnam policy by delaying passage of legislation desired by the Administration (The Washington Post, February 29, 1968). These and other colorful expressions of opinion are the essence of spirited debate. At the very least, they must be fully protected where, as here, the conduct being criticized is fully and accurately described in the same article so that there can be no misunderstanding in the mind of the reader who can draw his own conclusions as to the merit of that conduct.

3. The holding that petitioners' failure to verify further the statement that homeowners had started legal proceedings against Bresler constituted evidence of "recklessness sufficient for a finding of actual malice" is equally in conflict with the decisions of this Court. In *New York Times* this Court held that the Times' failure to check its own files "supports at most a finding of negligence in failing to discover the misstatements, and is constitutionally insufficient to show the recklessness that is required for a finding of actual malice." 376 U.S. at 287-8. See also *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81, 84 (1967). In *St. Amant v. Thompson*, 390 U.S. 727 (1968), the defendant in a television speech charged a deputy sheriff with accepting money from a corrupt union official based upon an unverified affi-

davit from another union member which subsequently proved to be false. In reversing a judgment for the deputy sheriff, this Court stated:

> These cases are clear that reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated, before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. 390 U.S. at 731

The court below made no effort to apply this standard of recklessness. Its attempt to distinguish *New York Times* on the basis that petitioners called Bresler on two earlier occasions pursuant to a policy of verifying doubtful facts (App. A, pp. 38-9) hardly established that they in fact entertained doubts on this occasion. If anything, this indicates that petitioners did not doubt the accuracy of their information regarding the homeowners' proceedings. Nor was there any reason for them to do so since their information came from a number of apparently responsible homeowners who presumably were speaking from first-hand knowledge regarding their complaints against Bresler.

4. Although Bresler was given extremely wide latitude to develop all of the facts and circumstances attending the publications in issue, there is insufficient evidence as a matter of law to establish knowing falsity or reckless disregard of the truth. The only holdings of the lower court addressed to the sufficiency of the evidence to meet this standard of actual malice are with respect to the two articles in which the word "blackmail" appears and the article regarding the homeowners' proceedings. For the reasons set forth in Points 1 and 3 above, this evidence clearly "lacks the convincing clarity which the constitutional standard demands." *New York Times Co. v. Sullivan, supra,* 376 U.S. at 285-6. The remainder of the court's findings as to the sufficiency of the evidence clearly relate to actual malice in the pre-*New York Times* sense of

"hostility" and "personal animus"/ and are based solely on petitioners' vigorous opposition to Bresler's public dealings as a major land developer in the city (App. A, pp. 39-40). Regardless of how such evidence is characterized, it is clearly insufficient to establish actual malice under the constitutional standard. *Garrison v. Louisiana*, 379 U.S. 64, 73 (1964); *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81 (1967); *Pauling v. Globe-Democrat Publishing Co.*, 362 F.2d 188, 198 (8th Cir. 1966), *cert. denied* 388 U.S. 909 (1967).

5. The trial court erred in repeatedly instructing the jury that respondent could recover if he showed "actual malice" which was defined—in connection with the particularly germane defenses of fair comment and the right to report public meetings—as "spite", "hostility", or "deliberate intention to harm" that could be inferred from the excessiveness of the publications themselves. Substantially identical instructions were described as "constitutionally insufficient" in *Rosenblatt v. Baer*, 383 U.S. 75, 84 (1966), and as "clearly impermissible" in *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81, 82 (1967). And in *Henry v. Collins*, 380 U.S. 356, 357 (1965), this Court summarily reversed on *certiorari* a judgment based upon a similar instruction allowing the jury to "infer malice . . . from the falsity and libelous nature of the statement," pointing out this instruction allowed the jury to find malice from "intent to inflict harm" rather than from "intent to inflict harm through falsehood." As the trial court made clear in its colloquy with counsel, *supra*, p. 12, its perfunctory instruction on the constitutional standard was not intended to correct the impression that the articles were actionable upon a finding of actual malice as it had previously been defined to mean "spite", "hostility", or "deliberate intention to harm." Inasmuch as substantially all of Bresler's evidence was directed at showing such hostility, these instructions were clearly prejudicial. If *New York Times* is to provide meaningful protection in a jury case, the constitutional standards of proof must be made abundantly clear in the instructions to the jury. Since the constitutional protection was clearly

and concededly applicable, the trial court should have given only the constitutional definition of actual malice in its instructions directed to whether or not the articles were actionable, as was requested by petitioners. Certainly, it should not be assumed as the Court of Appeals so casually did below, that the jury understood the instructions on this critical point differently from the trial court which gave them (App. A, p. 54).

6. In view of Bresler's claim of recklessness in connection with petitioners' failure to further verify their article on the homeowners' proceedings, the trial court similarly erred in refusing to instruct that reckless disregard of the truth under the constitutional standard means "more than mere negligence" and requires "a high degree of awareness of . . . probable falsity." This instruction was clearly necessary to convey to the jury the important subtleties inherent in the constitutional standard of recklessness as defined in *Garrison v. Louisiana, supra,* 379 U.S. at 74, and the other decisions of this Court cited in Point 3 above.

Thus, while the court below paid lip service to the *New York Times* rule, it completely failed to give substance to the constitutional protection in at least six obvious and and important respects. Any one of these clear errors, standing alone, requires reversal if the *New York Times* rule is to maintain credibility as an important protection of freedom of the press.

The glaring lack of substance to the lower court's central finding—that petitioners knowingly charged Bresler with the crime of blackmail—is an open invitation to a complete undermining of the constitutional protection by other courts who may find the *New York Times* rule difficult to accept. At the very least, the court's total disregard for the context of the articles is a dangerous precedent which, if allowed to stand, could seriously undermine constitutional protection of much of the strong or colorful expression commonly associated with "uninhibited, robust, and

wide-open" public debate. Such a severe limitation upon the vigor of public debate is clearly unwarranted, particularly, where, as here, the conduct criticized is clearly and accurately set forth in the same article so that the reader could draw his own conclusion as to the merit of that conduct.

The lower court's holding that recklessness can be shown by mere failure to verify information from apparently reliable sources, its obvious adherence to the pre-*New York Times* standard of actual malice as consisting of "hostility" or "ill will," its failure properly to exercise supervisory responsibility over the sufficiency of the evidence to show actual malice, and its failure even to insist upon proper instructions to the jury with respect to the proof necessary to overcome the constitutional protection are equally glaring departures from the holdings of this Court as to the meaning and substance of the *New York Times* rule. Certainly, if this decision is allowed to stand, the press will no longer be secure in relying on the *New York Times* rule as a meaningful and important safeguard of its freedom to report upon and criticize matters of public interest.

The fact that this unfounded litigation has proceeded this far, with its attendant strain on the limited resources of this small newspaper, is itself a serious threat to freedom of the press. The background and all of the facts relating to the publications in issue were fully developed at the trial and are set forth in pertinent part in the Joint Record Extract. The evidence is clearly insufficient to meet the constitutional standard of actual malice. If the further chilling effect upon free speech of an extensive retrial of this case is to be adequately protected against, it is respectfully urged that this Court must look beyond the clearly faulty instructions and determine from its own review of the evidence that the judgment below "constitute[s] a forbidden intrusion on the field of free expression." *New York Times Co. v. Sullivan, supra,* 376 U.S. at 285.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted and the judgment below reversed.

Respectfully submitted,

Roger A. Clark
1730 K Street, N.W.
Washington, D.C.
Attorney for Petitioners

APPENDIX A

IN THE COURT OF APPEALS OF MARYLAND

No. 97

September Term, 1968

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., et al.

v.

CHARLES S. BRESLER

Hammond, C.J.
Marbury
Barnes
Finan
Singley,

JJ.

Opinion by Barnes, J.

Filed: May 2, 1969

This appeal involves a judgment, entered upon the verdict of a jury by the Circuit Court for Prince George's County (Mathias, J.) for $17,500 damages ($5,000 compensatory and $12,500 punitive) in favor of Charles S. Bresler, appellee and plaintiff below, for libel, against the appellants and defendants below, Greenbelt Cooperative Publishing Association, Inc. (Publishing Association) publisher of the Greenbelt News Review (News Review), and its president, Alfred M. Skolnik.

Inasmuch as the jury returned a verdict in favor of the plaintiff, Bresler, we must review the facts in the light most favorable to him, where those facts are in dispute or where more than one inference may be drawn from them. *Camp-*

field v. Crowther, 252 Md. 88, 249 A.2d 168 (1969); *Cassell v. Pfaifer*, 243 Md. 447, 453, 221 A.2d 668, 671 (1966). Accordingly, we note that there was sufficient evidence in the record from which the jury could have found the following facts: The News Review is the only newspaper published in the City of Greenbelt. Its circulation consists of approximately 4,500 copies each week, of which only about 75 are paid subscriptions which are mailed; the remaining copies are delivered without charge to every house in Greenbelt. Mr. Skolnik is not only president of the Publishing Association, but also writes many of its feature articles and editorials. He is also one of the five members of the editorial board which reviews and edits all of the material published. His wife, Elaine Skolnik, writes many of the feature articles as well as a weekly column and is one of several housewives who serve as reporters. The Skolniks are well-educated persons, Mr. Skolnik holding three degrees, B.A., M.A. and Ph.D., and Mrs. Skolnik having attended college for three and one-half years.

The News Review published a number of articles and editorials concerning Mr. Bresler which are alleged to be false, malicious and libelous. The two principal articles which used the word "blackmail" with reference to Mr. Bresler related to the proposed zoning of two tracts of land (Parcels 1 and 2) in which he owned a 16-1/3 per cent interest. Bresler and his associates had requested, and the Maryland National Capital Park and Planning Commission (MNCPPC) Master Plan had recommended R-30 (Townhouse) zoning for both tracts, but this zoning was vigorously opposed by Greenbelt Homes, Inc., the large mutual housing cooperative in Greenbelt, (GHI) and a group known as "Citizens for A Planned Greenbelt" (CFPG). CFPG had approximately 650 Greenbelt residents as members, and had no requirement for membership other than the payment of $1.00. Mrs. Skolnik is one of the twenty members of the Steering Committee of CFPG, which operates as its executive body. Both Mr. Skolnik and his wife, Elaine, attended meetings of the Steering Committee.

The Skolniks are also members of GHI by reason of having purchased the perpetual use of one of the original Greenbelt row houses. GHI at one time owned all of the land now owned by Bresler and his associates, but sold it at a profit instead of developing it. GHI owns the wooden row houses which sell for between $5,000 and $10,000 and which are located in front of Parcels 1 and 2. It opposed the R-30 zoning for Parcels 1 and 2, even though it was building townhouses on its own property. It advertises regularly in the News Review. Charles Schwan is president of GHI and is a friend of the Skolniks. He serves with Mrs. Skolnik on the CFPG Steering Committee and is chairman of the CFPG Membership Committee.

The evidence at the trial, which began on January 3, 1968, indicated that in 1961 and 1962 the relations between Bresler and the City Council of Greenbelt were cordial. A rather glowing article appeared in The Washington Post of October 6, 1962, by John B Willmann, its Real Estate Editor, under the headline "Vast Private Developments Planned In 25-Year-Old Greenbelt Community", in which the proposed activities of Mr. Bresler as a developer are set out in some detail. It was indicated that he had acquired 450 acres of land in Greenbelt for nearly $2,000,000, and with a partner was beginning the first group of 61 homes. The total planning and zoning, however, which had been worked out with the Greenbelt officials, called for some 800 single-family dwellings and 350 townhouses in the areas north and south of Greenbelt. "Two years ago," the article stated, Mr. Bresler had "built and then sold, the 87-unit Greenbelt Apartments—a three-quarter-million-dollar project." The article stated:

> "There are now nearly 2000 row house and apartment living units in Greenbelt and more than a hundred residents are 'plank owners' in the community that was called Tugwelltown when it was conceived as a New Deal experiment. More than 8000 persons live in Greenbelt today and nearly that many

more would be added over the next several years by the developments planned by Bresler.

"Meanwhile, Greenbelt, will also grow with the development of Springhill Lake, a Community Builders' project on a 390-acre tract in the northwest section of the town. Ground was broken this summer for a planned community that eventually will be a $50-million development of town houses and high-and-low rise apartments totaling some 5000 living units."

In 1964, however, the relations apparently had become somewhat strained inasmuch as in the News Review of May 7, 1964, in an article written by Mr. Skolnik reporting what had happened at the meeting of the City Council of Greenbelt on May 5, it was stated that Councilman Simonson "also observed that much debris had been left along the shoreline, including a spreading patch of tar-oil, as the result of the construction of Lakeside Extended by the developer Charles Bresler." Further discussion was then reported and the article continued:

"It took the better part of two hours before the council and the audience decided that it made much more sense to stop attacking each other and concentrate on a common target—Bresler—who wasn't there. The council rapidly agreed, with the full approval of a tired audience, to get off a letter to Bresler notifying him that unless all material and debris now encroaching upon city land is removed within a specified time, the city will remove the debris at the developer's expense. Councilman Dave Champion dissented on the grounds that the city has already received assurances from Bresler that this would be done. The council and audience remained skeptical."

On June 2, 1964, Mr. and Mrs. Bresler and the Suburban Trust Company, mortgagee, executed and recorded among the land records of Prince George's County, a release of covenants previously entered into with the City of Greenbelt in 1962. These covenants allegedly placed on the 50

acre Charlestowne Village Terrace a limitation of the density to 7 units an acre.

By April 22, 1965, as reported in the News Review of that date, an active campaign was in progress for membership in CFPG, the principal goal of which was "'to preserve the fundamental character of Greenbelt as a low-density, planned residential community.'" In an article by Mr. Skolnik in the same issue bearing the headline "CITY BATTLES BRESLER ON 2 FRONTS; SETS SPRING CLEAN-UP FOR MAY 3-17", it was stated that: "Another confrontation is looming between the city council and the local developer, Charles Bresler and associates." The article recites that a subdivision plat for section 2 of Charlestowne Village was filed with MNCPPC calling for 260 units "in excess of the number agreed upon in the covenant entered into between the city and Bresler at the time the land was rezoned." The article further stated the MNCPPC had approved the subdivision plat as it only looked to the zoning of the land and "does not take into consideration private agreements between municipalities and developers." It was further stated that the "city and Bresler will also be at odds this week when the suit filed by the city against Ivy Homes, Inc. and Boxwood Village, Inc. comes before the circuit court," involving an alleged excess of rain water resulting from the rough grading of the land. The article continued: "Further disillusionment of the community with the developer was seen at the council meeting when new residents of Lakeside Extended complained that the developer was not removing unsightly debris accumulated from building operations."

We now come to the two articles in the News Review which form the principal basis for the libel action.

In the News Review of October 14, 1965, the first article containing the following relevant portions appeared:

"SCHOOL SITE STIRS UP COUNCIL REZONING DEAL OFFER DEBATED

by Dorothy Sucher

"Delay in construction of a new Greenbelt high school is the lever by which a local developer is pressuring the city to endorse his bid for higher density rezoning of two large tracts of land; so citizens heard at a well-attended special meeting of the City Council on Monday night, Oct. 11.

"For the past nine months, the Board of Education has been trying to acquire land owned by Consolidated Syndicates, Inc. (Charles Bresler–Theodore Lerner), for a high school site. * * *

* * *

"Some time ago, it became known that the developer would agree on the price, provided the city would help him obtain higher density rezoning for two of his tracts (Parcels 1 and 2, totalling 230 acres) near the center of Greenbelt. If the city refused, he threatened to delay the school site acquisition as long as possible through the courts.

* * *

"Blackmail

"'It seems that this is a slight case of blackmail,' commented Mrs. Marjorie Bergemann on Monday night, and the word was echoed by many speakers from the audience.

"Councilman David Champion, however, denied that it was 'blackmail,' explaining that he would rather 'refer to it (i.e., the negotiations–Ed.) as a two-way street.'

"Speaking from the floor, Gerald Gough, commented: 'Everyone knows there's a need for a school–just walk through the halls of High Point. The developer knows there's a need and says, 'we'll meet your need if you meet our need.' In my opinion, it's highly unethical.

* * *

"Delay Probable

"Mayor Edgar Smith remarked that it should be made clear that refusing the developer's terms did not necessarily mean the loss of the school site; that it would, however, probably mean a two or three year delay in the construction of the school.

* * *

"Among the parents who spoke was Mrs. Joseph Rosetti, who said: 'I have several children going into high school, but I would rather adhere to the Greenbelt Master Plan than overcrowd the town with dense development. I would stand for my children's discomfort, rather than give in to a blackmailing scheme.'

* * *

"Councilman William Hoff asked whether the City Council itself knew all the facts about the transactions with the Board of Education and said: 'We weren't ever informed about the money transactions between the developer and the school board.'"

In the same issue of October 14, a letter to the editor from Miriam and Howard Laster was published. This letter to the editor was entitled, "An Unethical Trade" and stated, in relevant part, the following:

"We have been following with great concern the county's attempt to build a high school in Greenbelt. As parents of a junior high school daughter, as well as three other children who eventually will attend secondary school, we are eager to see an excellent high school construction quickly in our city. However, we resent the way in which our needs are being exploited cynically by the land developer who owns the property on which the school is scheduled to be built.

* * *

"We do not envy the council its difficult choice. However, we believe strongly that it is a choice the council never should have been asked to make. The

two issues should not be confused, and the Board of Education should have rejected the developer's attempt to tie them together. Since it did not, we request that the council reject this unethical trade.

* * *

"While we never should have been forced to make such a choice, we believe that ethical and practical considerations both argue against agreeing to the developer's demands. We hope that other Greenbelt residents will join in indicating this at the next city council meeting Monday."

The second article appeared in the News Review of October 21, 1965, and contained, in relevant part, the following:

"COUNCIL REJECTS BY 4-1
HIGH SCHOOL SITE DEAL

by Mary Lou Williamson

"More than 150 citizens came to hear how the new City Council would respond to pressure by a local developer for higher density zoning on a large tract of land in exchange for uncontested consummation of the sale of a Greenbelt senior high school site to the Board of Education at the Council meeting Monday night.

"Council sat quietly listening for more than an hour to citizen statements before voting to reject the proposal (4-1) with Councilman Dave Champion dissenting. * * *

* * *

"A procession of citizens took the floor to make impassioned speeches—some from prepared texts, some extemporaneously. The mayor occasionally had to caution them to refrain from engaging in personalities.

"Albert Herling suggested skulduggery in the September court postponement. Although he praised most of the City Manger's report, he criticized the section entitled 'Risks and Conclusions,' saying they

appeared negative in the extreme. He suggested a list of positive steps that council ought to take: 1) fight Bresler's 'blackmail'; 2) make clear to the Board of Education—no deals; 3) make clear to the District Council (zoning authority) unanimous opposition to the requested R-30 zoning; and 4) seek the swiftest possible court settlement. * * *

* * *

"Pilski asked if anyone in the audience cared to speak in support of Bresler's proposal.

"Only James Martin took the floor. He suggested that Bresler's action was not 'blackmail' but the legitimate advance of his rights to develop his land, Martin suggested, by way of example, that GHI's long-range planning committee had been doing much the same thing some months ago. He alleged that the density of the 'frame homes (GHI) is far more atrocious than anything Bresler's considering.'"

Also in the October 21 issue, an editorial appeared entitled, "THE LIMITS OF COMPROMISE" in which it was stated:

"But some of the developers are not satisfied with half a loaf; they want the whole loaf, and in a few instances, do not seem to care what methods are used to achieve their goal."

In the January 20, 1966 issue of the News Review, a letter to the editor from Clifford Simonson, entitled, "ANOTHER CRIPPLING BLOW" was published. It stated in relevant part:

"On January 11 the county board of education and the developer Charles Bresler struck another crippling blow at Greenbelt's Master Plan. Bresler, in flagrant disregard of that plan and the wishes of nearly all Greenbelt citizens, moved to compound even further the serious problems which a senior high school in his land-locked property on parcel 2 would create."

After stating why the new school location was undesirable, Mr. Simonson continued:

"Chairman W. Carroll Beatty of the school board never did answer Elaine Skolnik's question as to whether the board had fully calculated all costs associated with developing the respective school sites. Board member Thomas Hicks never did answer questions as to how the elimination of a permieter road would affect the core of Greenbelt. The evasive answers can only lead one to the conclusion that such vital aspects were never really considered.

"Must we cannibalize original Greenbelt to spawn unwieldy, unplanned, and unwanted development, solely for the convenience and profit of the developer?"

In the issue of April 7, 1966, the News Review published an article by Mrs. Skolnik under the headline: "BRESLER REPUDIATES COVENANT SIGNED WITH CITY IN 1962", in which it was indicated that news of the Release of Covenants filed for record on June 2, 1964 "came as a complete surprise to city officials since Bresler had not at any time during the past 22 months notified the city that he had unilaterally abolished the covenant agreement." and that "The city is now looking into the legality of the 'Release of Covenants' filed by Bresler since it was not a party to the document."

A letter to the editor from Mrs. E. S. Ross was published in the News Review of May 19, 1966, which was as follows:

"I wonder if the rest of Greenbelt's residents were as startled as I was to read in Sunday's Washington papers of Spiro T. Agnew's invitation to Charles Bresler to run as the Republicans candidate for State Comptroller?

"The article in the Star made mention of Mr. Bresler's recent land dealings for the State. I wonder how much is known of his land dealings against this city?"

The News Review, in its issue of June 9, 1966, under the headline, "CHARLES BRESLER TO RUN FOR STATE COMPTROLLER." published an article indicating that Mr. Bresler expected to announce his candidacy for Maryland State Comptroller on the Republican Ticket on Saturday, June 11. The article then stated in relevant part:

> "Bresler, a real estate developer and builder, owns most of the remaining vacant land in Greenbelt. He developed the Plaza Apartments, Lakecrest Homes and Charlestowne Village, and was the original developer of Boxwood Village.
>
> "Bresler is currently faced with a series of legal actions instituted by the City of Greenbelt. * * *
>
> * * *
>
> "Reportedly, a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards."

It should be observed that until the letter to the editor in the News Review issue of May 19, 1966, and in the issue of June 9, 1966, there had been no mention of any kind in any News Review issue offered in evidence which referred to Mr. Bresler as holding or seeking any public office of any kind or of his fitness or lack of fitness for such an office, although Mr. Bresler was a member of the Maryland House of Delegates from Montgomery County (and not from Prince George's County where the City of Greenbelt is located), and there was no reference to any act of Assembly or other political activity by Mr. Bresler which might possibly affect the City of Greenbelt, its inhabitants or Prince George's County generally. All of the references were to Mr. Bresler as a land owner and developer.

Finally, on June 30, 1966, the News Review published an article under the headline "GHI FILES SUIT AGAINST SCHOOL BOARD; BRESLER INFLUENCE CITED" which stated in relevant part:

"The bill of complaint for injunction, filed by GHI's special attorney, David Reich, stated that in reversing its decision to buy parcel 15 (the city-preferred Beltway-Lake site), the school board was influenced by considerations other than the public interest and by the pressures and influence which the developers (Charles Bresler, Theodore Lerner, and associates) were able to assert by reason of their ownership of both sites (parcels 2 and 15).

* * *

"The chairman of the county school board is W. Carroll Beatty, who is a director of the Suburban Trust Company which has held the mortgages on much of Bresler's properties in Greenbelt. The county school board attorney is Paul Nussbaum, who is on the Suburban Trust Company's Advisory Committee."

The present action for damages for libel was filed on July 18, 1966, and an amended declaration was filed on November 7, 1966. The plaintiff, Mr. Bresler, claimed in the *ad damnum* clause, $1,000,000 compensatory damages and $1,000,000 exemplary or punitive damages. He alleged that in the publications mentioned in the amended declaration, the defendants, Publishing Association and Mr. Skolnik—

"[F]alsely and with express malice printed [the charges of blackmail] * * * for the purpose of imputing to the Plaintiff the commission of the crime of blackmail; and for the purpose of exposing the Plaintiff to public scorn, hatred, contempt, disgrace and ridicule; and for the purpose of injuring the Plaintiff in his aforesaid business and occupation; and to degrade Plaintiff in the esteem or opinion of the residents of the City of Greenbelt and the State of Maryland and elsewhere; and to infer and imply that Plaintiff is untrustworthy; and to injure Plaintiff in his credit and financial transactions; and to infer and impute to Plaintiff corrupt or dishonest motives in his dealings with City, County and State

officials and others; and to impute to Plaintiff moral turpitude, immoral conduct, dishonesty, fraud and falsehood.

"The aforesaid publications were intended to and did injure the Plaintiff as follows: They did injure the Plaintiff in his business and occupation, and did injure Plaintiff in his business reputation and practice, and did injure Plaintiff in his financial credit and transactions, and did expose the Plaintiff to public scorn, hatred, contempt, disgrace and ridicule, and did degrade Plaintiff in the esteem or opinion of the residents of the City of Greenbelt and the State of Maryland and elsewhere.

"Said publications were made recklessly and without reasonable justification or excuse, and were printed and published in said newspaper by and with the knowledge and consent of each of said Defendants, and said Defendant, Alfred M. Skolnik, personally directed supervised, assisted, and actively participated in, and cooperated in, the preparation, writing, editing, printing and publication of, the publications aforesaid."

The plaintiff did not elect a jury trial.

The defendants, in addition to the general issue plea that they did not commit the wrongs alleged, filed six other "defenses" challenging the sufficiency of the declaration to state a cause of action, and alleging that the publications were constitutionally protected under the First Amendment to the Federal Constitution and under Article 43 [40] of the Declaration of Rights of the Maryland Constitution; that the words were fair comment and were published without actual malice, and are privileged; and, that the words were published in good faith, without malice and with reasonable and probable cause. There was, however, no plea in justification of the truth of the alleged libelous words. The defendants elected a jury trial.

At the trial of the case, which began on January 3, 1968, before Judge Mathias and a jury, the plaintiff called

the defendant, Mr. Skolnik, as an adverse witness. After testifying to many of the facts already given concerning the operations of News Review, his education and position and duties with the News Review, as well as his and Mrs. Skolnik's connections with CFPG and GHI, Mr. Skolnik was interrogated in regard to the article in the News Review issue of October 14, 1965, in which the word "blackmail" was used. He testified that he knew "blackmail is somewhat in the category of a crime." He said that he did not know who had inserted the bold-face subheading "BLACKMAIL" and stated that "It probably struck them, put in the word, "blackmail", and further that "All we were doing was reporting what was said there and also what someone else said that it wasn't blackmail." When asked about Mrs. Marjorie Bergemann, who was quoted in the article of October 14 as using the phrase "a slight case of blackmail," Mr. Skolnik testified that Mrs. Bergemann was elected a member of the Steering Committee of CFPG six months after the article was published and that she was a friend of his.[1] Mr. Skolnik also identified Gerald Gough who was quoted in the article as using the phrase "highly unethical" as a member of GHI and CFPG. Mrs. Joseph Rosetti, who was quoted in the article as using the phrase "blackmailing scheme", was identified by Mr. Skolnik as a member of CFPG and also as a current member of its Steering Committee as well as a friend of his.[2]

Albert Herling, mentioned in the article in the News Review issue of October 21, 1965, as having "suggested" that the city council "fight Bresler's blackmail" was identified by Mr. Skolnik as both a member of GHI and of the

---

[1] Mrs. Dorothy Sucher, a witness for the defendants, who wrote the article, subsequently testified that Mrs. Bergemann was a neighbor and a "friendly acquaintance", who had requested that Mrs. Sucher contribute to the CFPG legal fund which was used to file an action for damages against Mr. Bresler.

[2] Mrs. Rosetti was also one of the unsuccessful plaintiffs in the damage actions brought against Bresler with the CFPG legal fund.

Steering Committee of CFPG at the time the article was published. Albert Herling was mentioned in the October 21 article as having used the word "skulduggery". Mr. Skolnik testified that this "is the word that the reporter used to interpret what Mr. Herling was saying" and that the word skulduggery "means something amiss, something improper perhaps."

Mr. Skolnik admitted in his testimony that he had written parts of the editorial in the News Review issue of October 21 in which it was stated that some developers "do not seem to care what methods are used to achieve their goal" and that he was referring to Mr. Bresler and his associates.

Mr. Skolnik was referred to the News Review issue of June 9, 1966, which attributed to The Evening Star a report that Mr. Bresler intended to announce his candidacy for Maryland State Comptroller, and which related at length legal proceedings in which Mr. Bresler was involved, including a suit by the city in regard to drainage problems in Boxwood Village. Mr. Skolnik admitted that this suit was against two corporations, one of which Bresler had no interest in, and not against Bresler personally, and that the News Review failed to report that the case was dismissed as to Boxwood Village and later settled with the other corporation in which Bresler had no interest. The article further stated:

> "Reportedly a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards."

Mr. Skolnik stated that this article had been written jointly by him and his wife, but that Mrs. Skolnik had written the above paragraph. He further stated that his wife had attended a CFPG meeting at which approximately 15 to 20 homeowners from Boxwood Village desired to air their complaints, but the chairman of the meeting said that they would not discuss the complaints, so that Mrs. Skolnik

talked to them after the meeting adjourned. When asked what suits had been filed, Mr. Skolnik testified: "No, I don't know anything about suits. All I know is that people were complaining about the fact that they were having troubles." He stated that he thought "[L]egal proceedings include complaints."

Mr. Skolnik was questioned about an article in the June 16, 1966 issue of the News Review entitled, "CFPG DRIVE LAUNCHED" in which the "collection of funds earmarked specifically for legal fees" by the Steering Committee of CFPG was publicized. In the article it was stated that "Citizens suits are now being prepared in connection with an eight-story high rise apartment on Charlestowne-Village acreage and other actions of developers which are contrary to the Greenbelt Master Plan."

When interrogated in regard to whether or not Mrs. Skolnik assisted in any way in the collection of those legal funds, Mr. Skolnik answered, "I don't recall any activity in that respect", and affirmatively stated, "I don't think she had anything or much to do with the drive for legal fees", but when shown the last paragraph of an article in the News Review which solicited assistance and listed three telephone numbers to call, he stated that the last number was his wife's telephone number and that he and Mrs. Skolnik did not have separate telephones.

Mr. Skolnik stated that this suit arose out of a suggestion by Mayor Smith that the City's suit for an injunction against the violation of the covenants be supplemented by private suits, in the event that if was determined that the City had no standing to maintain its suit. Mayor Smith was a member of the Steering Committee of CFPG at that time, and was chairman of its Official Liaison Committee. Mr. Skolnik also testified that the contemplated suit was to be a suit in equity for an injunction and for no other purpose. When asked about an article in the July 7, 1966 issue of the News Review, entitled "CFPG DRIVE UNDERWAY", which stated that the legal funds were "to

support legal action to maintain the garden-city character of Greenbelt and to help realize the City's Master Plan", Mr. Skolnik stated that one of the two telephone numbers given for those willing to assist to call, was the telephone number of Mrs. Skolnik.

In neither the News Review article in the June 16, 1966 issue, nor in the article in the issue of July 8, 1966, was there any mention of the fact that the suits were against any one except Mr. Bresler or for any purpose other than the stated purpose, i.e., to supplement the injunctive suit of the City. Mr. Skolnik on further examination, however, admitted that the suit which was instituted was one *at law* in which each plaintiff, including Mrs. Rosetti, claimed $175,000 compensatory and punitive damages, together with an injunction pursuant to Maryland Rule BF 40a.[3]

Mr. Skolnik further testified that he did not know of any support by CFPG of suits against any developers other than Bresler who were developing in Greenbelt contrary to the City's Master Plan. He stated that GHI, which had opposed MNCPPC's recommendations for R-30 (townhouse) zoning on Parcels 1 and 2, is, itself, building 25 townhouses on its own land.

Mr. Skolnik was asked: "Q. Have you ever instructed any of the members of your staff to call Mr. Bresler to verify any article which concerned him? A. No, we have no general—what we have is a general rule, that if you don't know the facts, if there is confusion about the facts, you call the principals involved." When asked if on any occasion there had been doubts to the facts where he had felt that it was necessary that he or the reporters communicate with Mr. Bresler, Mr. Skolnik was able to recall two

[3]It was stated at the argument, as well as in Mr. Bresler's brief without contradiction that this law suit was tried after the present case and that four of the plaintiffs withdrew from the case before and during trial. The Circuit Court granted a motion for a directed verdict against the remaining plaintiffs and a judgment for costs entered upon the directed verdict has not been appealed.

instances, one "a few months ago" in regard to a report that Bresler was removing the trees on land owned by him directly across from a new project he had built and the other in regard to a newspapper report in the Washington press that a high-rise apartment project was to be built on Parcel 15. Mr. Bresler gave them the correct facts on these two occasions.

Mr. Bresler, himself, was the next and final witness for the plaintiff. In response to questions as to whether he owned "the bulk of the undeveloped land in Greenbelt," he testified that he had an interest varying from 16-1/3 to 25 per cent in several parcels of land in Greenbelt, which totaled 430 acres, whereas, other developers owned approximately 2000 acres. Zoning petitions had been filed for approximately 600 acres of land, he having an interest in such petitions for about 230 or 340 acres. Mr. Bresler further testified that no suit had been filed against him for any alleged failure to make construction corrections as required by the County building standards.

He also stated that "the only personal suit I have had in Greenbelt is the one the City filed against me at the instigation of the News Review and G.H.I." He denied he was a blackmailer or that he had attempted to blackmail the City Council or the Board of Education or any one in connection with any of his projects or developments.

Mr. Bresler further testified that he had tried but could not obtain a subscription to the News Review. He tried to buy the paper but could not find any place to purchase the News Review. His office had telephoned for a mail subscription and "was told they didn't mail them out." He was surprised to hear Mr. Skolnik's testimony that the News Review has "50 to 75 people who receive mail subscriptions." When derogatory articles appear in the News Review, however, some person who receives the paper will mail one "to the Breslers. My wife opens it and one of my six kids will get up then and want to know what it is all about * * *. And the local residents call referring

to the Bresler news because invariably two or three articles are on the front page mentioning me by name and allude to my name—as one of them said, if it wasn't for for me there wouldn't be any paper."

On cross-examination, Mr. Bresler testified that he had signed the covenants in regard to building townhouses averaging 7 units an acre for 50 acres because "this was what they were going to do with everybody, that they were going to get the same covenants from everybody."[4] He said that he had in fact erected 144 townhouses, but the City had approved 12 units an acre for another developer, Lakeside North, a few months after the covenants "to assure no density larger than seven units per acre" had been required from him. He also stated that the developer of Lakeside North had agreed to build "townhouses, not garden apartments in that development," but did not "keep his word either" but the City took no action against that developer.

At the end of the plaintiff's case, the defendants made a motion for a directed verdict which was denied by the trial judge. The defendants then put on their case.

The first witness for the defendants was the mayor of Greenbelt, Edgar L. Smith. He testified that he was in his third term as mayor, having been prior to his election as mayor, a member of the City Council of Greenbelt (from 1959-61). He had been city attorney for the municipality for about six months. He stated that he had been present at the meetings of the City Council on October 11 and October 18, 1965, and that the articles in the issues of October 14 and October 21 represented "fair and accurate" reports of the respective meetings.

---

[4]Lewis Bernstein, a former City Planning Board Chairman and member of the Greenbelt City Council, who testified as a witness for the appellants confirmed Mr. Bresler's testimony in this regard when he admitted that it was his intention that Bresler "would be afforded no more or no less, no worse or no better treatment than any other developer in the City of Greenbelt."

On cross-examination, Mayor Smith stated that the date on which the City of Greenbelt first learned that Bresler intended to build a high-rise apartment was January 17, 1966, but the City Manager's Report for the week ending *October 22, 1965,* (a copy of which Mayor Smith assumed he received, as he normally does) indicated that Bresler was to construct a "High Rise 183 units", that the units "To be constructed" were in excess of the covenants and that "Mr. Brooks [city attorney] has been requested to prepare to take action to enforce the covenants." He testified that he did not think that either he or the City Council ever voted against any of CFPG's recommendations, and that he did not take issue with an article in the News Review which said that he went to meetings of the County Commissioners as a delegate from CFPG, and stated that he "didn't tell them I was Mayor, because I was there in a dual capacity. As Mayor, as delegate from CFPG." He also testified in regard to several committees set up by the Steering Committee of CFPG and that he was Chairman of the Official Liaison Committee as well as a member of the Steering Committee. Charles Schwan was Chairman of the Membership Committee and Albert Herling[5] was Chairman of the Public Relations Committee. Mayor Smith further testified that he was present and heard the entire discussions and that there was nothing that was discussed at either the meeting of the City Council of October 11 or October 18 which would "justify the use of the word 'blackmail.'" He further stated:

> "If there was any evidence that there was blackmail, any definite evidence of anything like this, the Council would have taken some action.
>
> "Q. You, as Mayor, would have told your Police Department to do something, wouldn't you?

---

[5]In the article in the News Review of October 21, 1965, Mr. Herling is reported as having "suggested skulduggery in the September court postponement" and that the council should take steps to "fight Bresler's 'blackmail.'"

"A. Yes, we would have gone further than that, the State's Attorney's office probably."

Mary Louise Miller Williamson testified for the defendants that she had written the article in the issue of the News Review of October 21, 1965, which referred to Mr. Herling's alleged allegation of "blackmail" and "skulduggery." On cross-examination, she stated, "I paraphrased his sentence but I selected out the word 'blackmail' was his word and I wanted to denote it was his word I was picking up * * *." As to the word "skulduggery" attributed to Mr. Herling, she stated:

> "I did not use that word. This is a good example of what happens on Tuesday night when the other members of the Editorial Board will read through an article. Apparently it was an effort to shorten. This was quite a long article and this is somebody else's phrase. That I do recall."

She further stated that the $5 contribution she made to the legal fund of CFPG was to be used to "preserve the Master Plan of Greenbelt." She was not told, however, that this fund would be used to sue Mr. Bresler for damages in excess of a million dollars. She assumed that Mrs. Skolnik was soliciting for these funds, inasmuch as she was on the Steering Committee. When asked whether there was "anything in the discussion * * * which justified the use of the word 'blackmail'", Mrs. Williamson replied: "There is no connection as far as I can see between what Mr. Bresler, what the situation—the offer, there is no relation between that and a crime of blackmail. There is a difference."

Dorothy Sucher testified on behalf of the defendants that she had written the article in the issue of the News Review of October 14, 1965, which first used the word "blackmail". She edited the second article in the issue of October 21, 1965, written by Mrs. Williamson and stated that the use of the word "skulduggery" was her idea. She is a member of CFPG and believed that she had contributed $1 to its legal fund drive. She stated that her article was not intended to be a complete quotation of every-

thing that was said at the meeting and that she had not used all of her notes in writing the story. She testified that she "knew blackmail was a crime." She recalled that Mrs. Skolnik participated in the discussion at the meeting but could not remember if Mrs. Skolnik had used the word "blackmail", but she could not say she had not used it. She knew that she did not quote her. She had quoted Mrs. Bergemann, however, who used the word "blackmail" and Mrs. Bergemann had requested that she contribute to the legal fund of CFPG. She did not know that this legal fund was to be used to try to collect damages from Mr. Bresler. She testified that she thought that she had inserted the subheading "blackmail" in her article, which was "edited by a number of people, but I don't remember any discussion."

The last witness for the defendants was Elaine Skolnik, who testified that she had attended the meeting at which Mrs. Bergemann had used the word "blackmail". She stated that Mrs. Bergemann was a friend of hers as was Charles Schwan. She further stated that she had three and one-half years of college education. She testified that to her the words "started legal proceedings" meant "they went to a lawyer." She stated that she had not urged any litigation against Mr. Bresler; she is a member of the Steering Committee of CFPG and voted "to endorse the citizens, which was a suit to enjoin the building of the high rise apartment and to enforce the covenants." She stated that she did not solicit for the legal fund of CFPG and that her telephone number was "probably in the papers to—as far as volunteers * * * to go out and solicit." The legal funds were to be used to "* * * see that Greenbelt was developed according to the Greenbelt Master Plan." In regard to "blackmail" she testified:

> "It could be a crime, especially it is a crime when you think someone has exerted the money or tried—where you are being paid off or where you can land in jail.

"Q. Right. Well was Mr. Bresler involved in the crime of blackmail as a result of what he was proposing to the City Council or Board of Education?

"A. Not the crime of blackmail.

* * *

"Q. I am asking you if you think the word 'blackmail' was a proper description to be applied to what Mr. Bresler was asking the City Council or the Board of Education to do?

"A. In the context of the meeting, yes, it was proper."

The defendants again moved for a directed verdict at the conclusion of all the testimony and the trial court overruled this motion. The trial court pointed out that there was no plea of justification that the allegations of blackmail were true. Counsel for the defendants stated:

"What I am saying is we don't contend that the plaintiff committed blackmail, that is all. We don't intend [contend] the plaintiff committed the crime of blackmail."

The trial judge gave a comprehensive charge to the jury to which the defendants filed two exceptions. The charge and exceptions will be particularly mentioned when we consider the alleged errors in the charge.

In his opening statement to the jury, counsel for Mr. Bresler stated, in part, the following:

"Now we have not been able to determine why Mr. Bresler was singled out. I say this for this reason. *It is true he is a public figure and I suppose everybody needs a whipping boy,* but the evidence will show, one, that Mr. Bresler is *only a minority owner in this land.* Unfortunately, he is not wealthy enough to have purchased this land himself and built and developed it himself, so his interest approximates fifteen per cent or sixteen and two-thirds per cent, or in one case, I believe, it ran as high as twenty-

five per cent, *but a minority owner.*" (Emphasis supplied)

As we have indicated, the jury returned a verdict of $17,500 damages ($5,000 compensatory and $12,500, punitive) in favor of Mr. Bresler and against the Publishing Association and Mr. Skolnik.

The appellants make four contentions before us:

1. The publications are constitutionally protected because (a) they relate to Bresler's qualifications as a public official, and (b) to his activities of public interest as a public figure.

2. The two reports of the meetings of the City Council at which the term "blackmail" was used are particularly entitled to constitutional protection because they are fair and accurate reports of what was said during official public meetings.

3. There was insufficient evidence as a matter of law to establish that the defendants and appellants published a false and defamatory statement about the plaintiff and appellee Bresler with knowledge that it was false or with reckless disregard of whether or not it was false.

4. The trial court erred in its instructions in four particulars.

Before considering specifically the four contentions of the appellants, several general observations should be made.

First of all, it seems apparent that but for the federal constitutional protections which the appellants allege are applicable and on which they principally rely, the facts alleged and proved in the present case would, under the Maryland law relating to libel, present a case of libel for which damages, both compensatory and punitive, could be awarded by a jury to Mr. Bresler against the defendants and appellants. It is well settled in Maryland that words which falsely charge a person with, or impute to him, the commission of a crime for which he is liable to be prosecuted and punished are actionable *per se.* As Judge Horney, for

the Court, aptly stated in *American Stores Co. v. Byrd*, 229 Md. 5, 12-13, 181 A.2d 333, 337-38 (1962):

> "The historical distinction between slander *per se* and slander *per quod* is undoubtedly based on the theory that in words actionable *per se*, their injurious character if a fact of common notoriety, and necessarily import damages not requiring proof of special damages (cf. *Foley v. Hoffman*, 188 Md. 273); while, if the words used are not defamatory *per se*, they must be explained by innuendo and colloquium (cf. *Walker v. D'Alesandro*, 212 Md. 163). See *Odgers on Libel and Slander* (Am. Ed. by Bigelow), p. * * * 309.
>
> "Consistently this Court has held that words which falsely charge a person with or impute to him the commission of a crime for which he is liable to be prosecuted and punished are actionable *per se*. See, for example, the early case of *Dorsey v. Whipps*, 8 Gill 457, 462 (1849), where, in quoting 1 *Starkie on Slander*, p. 43; it was said: 'To impute any crime or misdemeanor, for which corporal punishment is to be inflicted, is actionable without proof of special damage.' And see *Haines v. Campbell*, 74 Md. 158, 21 Atl. 702 (1891), where it was stated that if spoken words convey an implication of crime, they are actionable in whatever mode their meaning may be expressed, that is, whether by way of interrogation, insinuation, ironic praise or any other form of speech understood by the hearers. See also *Wheatley v. Wallis*, 3 H. & J. 1 (1810); *Bonner v. Boyd*, 3 H. & J. 278 (1811); *Long v. Eakle*, 4 Md. 454 (1853); *Shockey v. McCauley*, 101 Md. 461, 61 Atl. 583 (1905). Other cases in this area are collected in 14 M.L.E., *Libel and Slander*, § 14 (Commission of Crime).
>
> "It may well be that the words—'did you get (or pick up) the $117 that was on the counter'—do not in and of themselves carry an imputation of having stolen the money. But there is no requirement that the defamatory words must embody an outright

> accusation of the commission of a crime, for '(i)n cases of slander, words take their actionable character from the sense in which they appear to have been used, and that in which they are most likely to be understood by those who hear them.' *Garrett v. Dickerson*, 19 Md. 418, 447 (1863). And if the slanderous words used are such as in ordinary 'lay conversation' will impute, or be understood to impute guilt, that is sufficient to make them actionable *per se*. *Blumhardt v. Rohr*, 70 Md. 328, 17 Atl. 266 (1889). Cf. *Pollitt v. Brush-Moore, Etc., Inc.*, 214 Md. 570, 575, 136 A.2d 573 (1957)."

American Stores was a far weaker case for the plaintiff on the facts in charging the commission of a crime than are the facts in the present case, but we held that the jury verdict for the plaintiff for $25,000 punitive damages was supported by the evidence.

In the instant case the word "blackmail" was used as a sub-heading without qualification. The charge of blackmail was stated in the News Review issue of October 14, 1965, and was again repeated in the next week in the issue of October 21. The appellants argue that the word "blackmail" was used in a non-criminal sense, but the intended meaning was for the jury to determine. *American Stores v. Byrd, supra.* The jury found against the appellants.

There is little doubt that a statement that a person is guilty of blackmail changes the commission of a crime for which a person may be prosecuted and punished. In Maryland extortion or blackmailing is recognized as a crime. See Code (1957) Article 27, Sections, 561, 562 and 563,[6]

[6] Article 27, § 561 makes it a statutory felony, punishable by 2 to 10 years imprisonment in the penitentiary, to knowingly send or deliver a letter, with or without name attached, threatening to accuse any person of an indictable crime *or* of anything which if true would bring a person into contempt or disrepute or to do any injury to person or property, with a view or intent to extort or gain money, goods, chattels or other valuable thing; Section 562 makes it a statutory felony, punishable by 2 to 10 years imprisonment in the peniten-

indexed under "CRIMES AND OFFENSES" in Volume 10 as:

> "Blackmail.
>
> Threatening letters, art. 27 §§ 561 to 563. See Threats and Threatening letters."

A similar reference is made in Vol. 10 under the separate heading "BLACKMAIL."

The charging of Mr. Bresler with having committed blackmail could be found by the jury (as it was) that he was charged with the commission of a crime.

As the Court of Special Appeals pointed out in Note 3 in its opinion in *Iozzi v. State*, 5 Md. App. 415, 247 A.2d 758 (1968), in considering a prosecution under Article 27, Section 562:

> "Generally, the term 'blackmail' is equivalent to and synonymous with 'extortion'. 31 Am.Jur.2d, 905." (5 Md.App. at 418, 247 A.2d at 760)

See *Las Vegas Sun, Inc. v. Franklin, 74 Nev. 282, 329 P.* 867 (1958) (use of word "blackmail" in headline or tagline of newspaper libelous per se, but reversed on other grounds); *Culver v. Marx*, 157 Wis. 320, 147 N.W. 358 (1914) (charge of blackmailing slanderous per se); *Hess v. Sparks*, 44 Kan. 465, 24 P. 979, 21 Am. S.R. 300 (1890) (referring to defendant as a "blackmailer" slanderous per se). See also *Mitchell v. Sharon*, 51 F. 424 (N.D. Calif. 1892), (*aff'd* 59 F. 980 (9th Cir. 1894) (stating that charging a person with being a "blackmailer" is equivalent to charging such person with being guilty of the crime of "extortion" but holding that words were not slanderous per se because it imputed only an intent to commit blackmail, not the actual crime).

---

tiary, to threaten or accuse verbally a person under the same circumstances set out in Section 561; Section 563 makes it a misdemeanor, punishable by not exceeding 2 years in jail or the house of correction, to falsely accuse any person or threaten to accuse another with the intent to extort money or procure other profit, of any crime or anything which if the accusation were true would tend to bring him into contempt or disrepute.

See generally 53 C.J.S. *Libel and Slander*, § 65, page 110 (1948), where it is stated:

> "Charging a person with being a blackmailer is equivalent to charging him with being guilty of the crime of extortion, and is slanderous per se in jurisdictions where extortion or blackmailing is recognized as a crime."

It is well settled that under the Maryland Constitution and our prior decisions, that there was sufficient evidence to support the jury's verdict in this case.

Article 40 of the Declaration of Rights of the Maryland Constitution provides:

> "That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to be allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege."

Our predecessors, in *Negley v. Farrow*, 60 Md. 158 (1883), held that liberty of the press, "is a right belonging to every one whether a proprietor of a newspaper or not, to publish whatever he pleases without the license, interference or control of the government, being responsible alone for the abuse of the privilege." (60 Md. at 176) *Negley* involved an action against the publishers and owners of "The Herald and Torchlight", a newspaper published in Hagerstown, by the plaintiff, a republican Senator from Washington County, who claimed that an article in the paper charged him with collaborating with a corrupt democratic ring, with having voted for the ring's candidate after having participated in the republican caucus in nominating another person, with aiding the ring in defeating a bill for repeal of an Act authorizing the publishing of laws in newspapers, and charging him with thereby proving false to his political obligations and a traitor to his party and bringing dishonor upon the republicans of Washington County who had elected him to the Senate. The article further charged the Senator with having been

given a contract to furnish stone to a canal by its president, the head and front for the democratic ring, because he was a Senator "and had a vote to give in the Senate." The jury rendered a verdict for the plaintiff for $3,000. In holding these charges to be libelous *per se*, Judge Robinson, for the Court, stated:

> "No one denies the right of the defendants to discuss and criticize boldly and fearlessly the official conduct of the plaintiff. It is a right which, in every free country belongs to the citizen, and the exercise of it, within lawful and proper limits, affords some protection at least against official abuse and corruption. But there is a broad distinction between fair and legitimate discussion in regard to the conduct of a public man, and the imputation of corrupt motives, by which that conduct may be supposed to be governed. And if one goes out of his way to asperse the personal character of a public man, and to ascribe to him base and corrupt motives, he must do so at his peril; and must either prove the truth of what he says, or answer in damages to the party injured.
>
> "The fact that one is the proprietor of a newspaper, entitles him to no privilege in this respect, not possessed by the community in general. The law recognizes no duty, imposed on him, arising from his relations to the public, to defame and libel the character of any one, and if he does, it is no answer to say, he did so in good faith, and without malice, honestly believing it to be true. Malice in one sense may be said to be an essential element in an action for libel, but not malice in the ordinary sense of hatred or ill will against the person, of whom the defamatory words are spoken. If the publication be in itself libellous, the law in all such cases implies malice; in other words it says, you have no right to libel another, whatever may have been the motive or intention." (60 Md. at 176-77)

Negley v. Farrow was cited with approval and portions of the opinion of the Court in that case were quoted by us in

A. S. Abell Co. v. Kirby, 227 Md. 267, 274-75, 176 A.2d 340, 343 (1961).

In addition to the publications that Mr. Bresler had committed blackmail, there were publications that he had engaged in "An unethical trade", had been guilty of "skullduggery", had had legal proceedings "started against him for failure to make construction corrections in accordance with county standards." These allegations were injurious to Mr. Bresler in his business as a contractor and were libelous *per se*. As Judge (later Chief Judge) Prescott, for the Court, stated in *Thompson v. Upton*, 218 Md. 433, 437, 146 A.2d 880, 883 (1958):

> "We have so recently had occasion to pass upon the legal principles involved herein, *Pollitt v. Brush-Moore, Etc., Inc.*, 214 Md. 570, 136 A.2d 573, that it will be unnecessary to unduly elaborate upon them. It has been repeatedly stated that the scope of libel is wider than that of slander. This Court stated in *Bowie v. Evening News*, 148 Md. 569, 574, 129 A. 797, that it had been said that there is no definition of the term 'libel' sufficiently comprehensive to include all cases. We shall not attempt to do what has baffled the Courts for these many years, namely, to compose an all-inclusive definition thereof. However, libel includes any unprivileged (i.e., a publication not having an absolute privilege), false and malicious publication which by printing, writing, signs or pictures tends to expose a person to public scorn, hatred, contempt or ridicule, *Foley v. Hoffman*, 188 Md. 273, 284, 52 A.2d 476; and also embraced therein is any such publication that relates to a person's office, trade, business or employment, if the publication imputes to him some incapacity or lack of due qualifications to fill the position, or some positive past misconduct which will injuriously affect him in it. *Foley v. Hoffman, supra; Pollitt v. Brush-Moore, Etc., Inc., supra*, at p. 577."

This rule has not only been applied to those who practice the profession, such as attorneys, clergymen, physicians and

teachers, but also to those engaged in business. The rule was specifically applied to contractors in *Plenol v. Beuttler*, 253 Iowa 259, 111 N.W. 2d 669 (1961); *Schneidman Heating, Inc. v. New York Plumbers' Specialities Co.*, 238 App. Div. 318, 264 N.Y.S. 146 (1933); *Williams v. Daily Review, Inc.*, 236 Cal. App.2d 405, 46 Cal. Rptr. 135 (1965); see generally 53 C.J.S. *Libel and Slander*, § 37 at 85 (1948).

In regard to the defense of fair comment, Judge (now Chief Judge) Hammond, after a review of the authorities, stated, for the Court, in *A. S. Abell Co. v. Kirby, supra:*

> "Maryland has consistently followed the majority rule—that defamatory misstatement of fact cannot be defended successfully as fair comment. *Snyder v. Fulton*, 34 Md. 128, 137-8; *McBee v. Fulton*, 47 Md. 403, 416; *Brush-Moore Newsp. v. Pollitt*, 220 Md. 132, 138. Cf. *Negley v. Farrow*, 60 Md. 158; *Coffin v. Brown*, 94 Md. 190. The distinction between 'fact' and 'opinion', although theoretically and logically hard to draw, is usually reasonably determinable as a practical matter: Would an ordinary person, reading the matter complained of, be likely to understand it as an expression of the writer's opinion or as a declaration of an existing fact? An opinon may be so stated as to raise directly the inference of a factual basis, and the defense of fair comment usually has been held not to cover an opinion so stated." (227 Md. at 273-74, 176 A.2d at 343)

There would seem to be little doubt that under the Maryland law, apart from the federal constitutional protections which the appellants allege apply, the jury's verdict and subsequent judgment thereon would be held to be supported by the evidence and affirmed.

Secondly, we should observe preliminarily that we have grave doubts that Mr. Bresler was a "public official" or even "a public figure" within the purview of the holdings of the Supreme Court of the United States in *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.

Ed. 2d 686 (1964), and subsequent cases following and applying it, and in *Curtis Publishing Co. v. Butts* and its companion case, *Associated Press v. Walker*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967). Mr. Bresler was not a "public official" of Prince George's County, but was a member of the Maryland House of Delegates from Montgomery County. There is no suggestion that any of his activities as a member of the House of Delegates from another County had had any particular effect upon Prnce George's County or upon Greenbelt and its citizens and property owners. Substantially all of the libels were published some *seven months before* he was asked by Governor (now Vice President) Agnew to run for Comptroller of Maryland. Indeed until the issue of the News Review of May 19, *1966*, there was no mention in any of the relevant articles, letters or editorials published by the News Review of the fact that Mr. Bresler was a member of the House of Delegates or held *any public office*. The articles were directed at Bresler as a *private developer* of land in the Greenbelt area. There is no suggestion that he had any political or other prominence at the national, state, county or municipal level. However, in the present case we are not called upon to make this determination inasmuch as counsel for Mr. Bresler conceded in his opening statement that his client was a "public figure" and perhaps, more importantly, the trial judge in the lower court's instructions to the jury (as will be considered more fully later in this opinion) imposed the necessity upon the plaintiff Bresler to show actual malice within the definition of *New York Times* and Mr. Bresler did not object to the charge. The jury having found in his favor and there being no cross-appeal by him, we need not consider whether or not the trial court's charge was unduly favorable to the appellants as they clearly cannot object to this.

1.

The appellants contend that the publications involved in this case are entitled to federal constitutional protection under the decisions of the Supreme Court of the United States in *New York Times v. Sullivan, supra; Garrison v.*

Louisiana, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964); *Rosenblatt v. Baer,* 383 U.S. 75, 86 S.Ct. 669, 15 L.Ed.2d 597 (1966); *Beckley Newspapers Corp. v. Hanks,* 389 U.S. 81, 88 S.Ct. 197, 19 L.Ed.2d 248 (1967); and *St. Amant v. Thompson,* 390 U.S. 727, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968); in regard to "public officials" and the decision of that Court in the companion cases of *Curtis Publishing Co. v. Butts* and *Associated Press v. Walker, supra,* in regard to a "public official" and a "public figure" within the meaning of those cases on the theory that the publications relate to Bresler's qualifications to hold office and concern his activities of public interest as a public figure. We have already indicated our doubt that the publications come within the ambit of the cases mentioned, and we need not repeat our reasons for this doubt. As we pointed out, however, because of the posture of the case and in light of the instructions of the trial court to the jury, it is not necessary for us to resolve this doubt as we may assume, *arguendo,* that Bresler was a public official and a public figure within the meaning of the federal cases mentioned, and also that the publications had relevance to Bresler's activities as a member of the Maryland House of Delegates from Montgomery County, or to his activities as a "public figure" (as contrasted with his private business activities with others), as a developer of land and builder of houses and apartments in the Greenbelt area.

2.

The second point raised by the appellants is that the two reports of the City Council meetings held on October 11 and 18, 1965, are particularly entitled to full constitutional protection because they are fair and accurate reports of what was said during public meetings. The appellants state in their brief, however, that recovery "based on accurate reports of official public meetings should be permitted, if at all, only under the most extraordinary circumstances where the evidence clearly establishes that a false factual charge of a highly damaging nature was published with knowledge of its falsity or with serious doubt as to its

truthfulness." What the appellants apparently overlook is that there was credible evidence from which the jury could (as it obviously did) find that the present case was indeed a "most extraordinary" one in which the publishers of the false statement knew it was false and that nothing at the public meeting justified the charge that Bresler had committed blackmail. As we have indicated, Mr. Skolnik and several witnesses for the appellants connected with the publication testified that they knew that "blackmail" indicated criminal conduct and further that nothing occurred at either of the October 1965 meetings of the City Council which justified such a charge of criminal conduct by him. Counsel for the appellants also stated at the trial that they did not contend that Bresler committed blackmail.

It is doubtful that there is any privilege of reporting, as items of news, the proceedings at a public meeting of a City Council, as contrasted with the publishing of an official report of the City Council itself. See *Buckstaff v. Hicks*, 94 Wis. 34, 68 N.W. 403, 59 Am. St. R. 853 (1896). In *Buckstaff*, a councilman of the City of Oshkosh, Wisconsin stated at a council meeting that the plaintiff, State Senator Buckstaff (from the Oshkosh district), who was opposing a charter amendment for Oshkosh, was "four-fifths of his time in a state of intoxication." The Oshkosh Northwestern published this statement. The Supreme Court of Wisconsin affirmed a judgment for Senator Buckstaff, entered upon a directed verdict for the plaintiff as to liability, and held that the report of the hearing before the City Council did not give the newspaper a qualified privilege to print the libelous material. Mr. Justice Winslow, for the Supreme Court of Wisconsin, stated:

> "It is certain that the publication in question is not the report of the proceedings of a court or legislative body. The term 'legislative body', in this connection, has not been extended to cover a City Council meeting. Newell, Defamation, S. & L. 599; Odyers Libel & S. 260. Doubtless, an official report

> of a city council meeting required to be published by law in the official city paper would be privileged; but that is not the present case. The report before us was not an official report. No official report of the meeting was even made or published. The article in question was a mere voluntary report, published as an item of news; hence it cannot be protected as an official report of a council meeting probably would be, nor does the fact that the newspaper was in fact the official paper of the city cut any figure." (94 Wis. at 39, 68 N.W. at 404, 59 Am. St. R. at 855)

Even if the qualified privilege did ordinarily apply, however, it will not protect the publisher against liability in damages for the publication of *irrelevant defamatory matter* and for *repetition* of false statements not otherwise privileged. *Negley v. Farrow, supra.* See *Pulvermann v. A. S. Abell Co.*, 228 F.2d 797, 802 (4th Cir. 1956), in which the Court, in summarizing the Maryland law, stated: "The rule in Maryland is that repetition of false statements is not privileged." See also Prosser, *The Law of Torts*, § 108 at 787 (3rd Ed. 1964).

Nor was it likely that *Bresler, himself*, would have access to the News Review to present his position in the matter and show that he had not committed blackmail, was not guilty of skulduggery or had not been sued for failure to carry out the county building requirements, in view of the refusal of the News Review to permit him to subscribe to it, even though it did mail some 75 copies of the publication to others at a nominal charge.

The issue before the City Council was not whether Bresler had committed blackmail and that issue was irrelevant to the real issue, as several witnesses for the appellants indicated. There appears to be no justification, in any event, for the *republishing* of the term "blackmail" in the issue of October 21 after its original publication in the issue of October 14. Certainly, there is even less justification for the use of the word "blackmail" as a sub-headline, standing

alone and without qualification. See *Las Vegas Sun, Inc. v. Franklin, supra.*

In regard to the *accuracy* of the reporting of what occurred at the City Council meetings, Mrs. Williamson testified that the word "skulduggery" was not used by any speaker at the meeting to whom it was attributed or even by her. She testified that: "I did not use that word. This is a good example of what happens on Tuesday next when the other members of the Editorial Board will read through an article." There is little doubt that the word "skulduggery" was intended to indicate dishonest conduct on the part of Bresler and to hold him up to ridicule and contempt. The word is defined in the *Webster's New International Dictionary*, (Second Ed. 19) as "Trickery; secret or hidden wickedness or practice" and in the *Random House, American College Dictionary* (1961) as "N. U.S., dishonorable proceedings, mean dishonesty or trickery." The jury could properly conclude that the reports of the hearing were not accurately reported and were, also, published with a knowledge of their falsity or with serious doubt of their truthfulness.

3.

The appellants contend that there was insufficient evidence as a matter of law that they published a false and defamatory statement about Mr. Bresler with knowledge that it was false or with reckless disregard of whether or not it was false and that they were entitled to a directed verdict for this reason. We do not agree with this contention.

The case is an extraordinary one in that Mr. Bresler was able to establish from Mr. Skolnik and from several of the witnesses for the appellants, e.g., Mayor Smith, Mrs. Williamson and Mrs. Skolnik, that the appellants did in fact know that the use of the term "blackmail" did import serious criminal conduct on Bresler's part and further that there was nothing which was before the meeting or which happened at the meeting which would justify the use of such a term in regard to Mr. Bresler. It is not surprising, therefore, that

the jury found - as they were required to find under the trial court's charge - that the charge of blackmail was false, and accordingly they could have found that it was known by the appellants to have been false or was published with reckless disregard of whether it was false or not.

The appellants suggest that because they published in the October articles that at each meeting there was one person who expressed the "opposite opinion", i.e., that Bresler was not guilty of blackmail, there was no "unfair comment." In our opinion, however, these statements could indicate that the original use of the term "blackmail" was indeed intended and understood to be used in its sense of importing serous criminal conduct on Bresler's part. As we have indicated, there was evidence from which the jury could and did find that this charge was false, known to be false but was published with actual knowledge of its falsity or with a reckless disregard of whether or not it was false. These facts, in our opinion, distinguish the present case from the cases relied on by the appellants, i.e., *Parker v. Kirkland,* 298 Ill. App. 340, 18 N.E.2d 709 (1939) (involving a statement by counsel for the newspaper before a quasi-judicial body where the charge of blackmail was relevant to the issues); *Bennett v. Seimileer,* 175 Kan. 764, 267 P.2d 926 (1954) (involving a charge that the plaintiff was a "traitor" to his local union which the court held was not slanderous, *per se* in the context used, as not charging the commission of a crime); *Flanagan v. Nicholson Publishing Co.,* 137 La. 587, 68 So. 964 (1915) (involving a charge that the plaintiffs "own union * * * [denounced] him as a traitor" which the court held was not slanderous *per se* in the context used); *Pulvermann v. A. S. Abell Co., supra,* and *St. Amant v. Thompson, supra.* In the latter case, the Supreme Court of the United States, in a case involving the alleged libel of a public official, stated that there must be convincing proof that the appellants "in fact entertained serious doubts as to the truth" of the published statement. It would be difficult to conceive of a case in which there was more "convincing evidence"—the admissions of one of

the appellants and of several of their witnesses—that the appellants did indeed have actual knowledge of the falsity of the charge or, in any event, entertained "serious doubts as to its truth."

In considering the failure of Mrs. Skolnik to check either the court records or with Bresler, himself, by telephone relative to the false charge that various homeowners "had started legal proceedings" against Bresler in regard to construction defects in their homes built by him, the appellants argue that Mrs. Skolnik's failure to check first was at the most negligence and was not a "reckless disregard of the truth" as required by *St. Amant*. In our opinion, the jury could have concluded from the evidence that Mrs. Skolnik's failure in this regard did amount to a "reckless disregard of the truth." In the first place, Mrs. Skolnik is a knowledgeable, educated person with three and one-half years of college education. She is experienced as a reporter for the News Review and she must have known that the report of the actual institution of suits against a builder and developer "for failure to make construction corrections in accordance with county standards" was calculated to result in serious injury to Bresler's standing as a builder and developer, to his reputation as a competent builder and developer and would hold him up to ridicule and contempt in the very area in which he was engaged in building and construction.

Secondly, it is correct, as the appellants point out, that, in *New York Times*, the newspaper was not held to have been guilty of such recklessness as is necessary for a finding of actual malice in regard to a public official (but was only guilty of negligence), in failing to check its own files to discover that the statement published by it was false. In the instant case, however, Mr. Skolnik testified that the News Review had "a general Rule that if you don't know the facts, if there is confusion about the facts, you call the principals involved." He also stated that the News Review had on at least two occasions, telephoned Bresler, himself, to verify certain charges made against him and in

both instances had discovered that the charges were in fact false and unjustified, and they were not published. The jury might well have found that in the light of this established publishing policy and practice as well as the other circumstances already mentioned, the failure by Mrs. Skolnik to verify either in the court records or by a simple telephone call to Bresler the truth of the serious charge of the institution of the suits, amounted to recklessness sufficient for a finding of actual malice.

Then too, in the present case, there were sufficient facts to indicate to the jury, an affirmative hostility, a personal animus, against Bresler and a desire on the part of the publishers of the News Review to injure his reputation and standing in the Greenbelt area through the use of the false charges. The following facts are sufficient to justify such a conclusion by the jury. The headings of the publications, themselves, such as "AN UNETHICAL TRADE", "ANOTHER CRIPPLING BLOW", "BRESLER REPUDIATES COVENANT", "STARTLED AT BRESLER", "BRESLER INFLUENCES", "BRESLER SUITS", "CITY BATTLES BRESLER", many of which were written by Mr. Skolnik himself; the formation of the CFPG legal fund for the express purpose of filing suits against Bresler by Mr. Stern and Mrs. Skolnik, both of whom were members of the staff of the News Review, the soliciting of funds for the CFPG legal fund through the News Review and the solicitation of collectors by Mrs. Skolnik; the misrepresentation to several persons through the paper that the CFPG legal fund was to be used *only* to enjoin the "actions of developers which are contrary to the Greenbelt Master Plan" when in fact the legal fund was used to institute (unsuccessful) damage actions against Bresler amounting to nearly $2,000,000 in claimed damages; the close connection between the Skolniks, Mrs. Bergemann, Mrs. Rosetti and Mr. Herling (those to whom the word "blackmail" was attributed), Mrs. Sucher and Mrs. Williamson (who wrote the articles) and Charles Schwan, the president of GHI and the principal opponent of Bresler on the high school and zoning issues; the opposition of the News

Review to the zoning of Parcels 1 and 2 for townhouses, but with no opposition to the construction of townhouses by GHI, itself; the fact that Bresler was allegedly making a profit from land once owned by GHI but purchased by Bresler; the attacks on Bresler for allegedly repudiating his agreement in regard to the building of a high-rise apartment instead of townhouses but with no corresponding attack upon another builder and developer in the area who violated his agreement to build townhouses instead of garden apartments; and, finally, the attack upon Bresler (who was to be afforded "no more or no less, no worse or no better treatment than any other developer in the City of Greenbelt" according to the testimony of Lewis Bernstein, a witness for the appellants) for allegedly building 12 instead of the "average" of seven units per acre at one end of Charlestowne Village, but remaining silent when the City of Greenbelt approved the Lakeside North development with covenants restricting density to 12 units.

In our opinion, it cannot be said in the present case that there was insufficient evidence (with all reasonable inferences from that evidence) from which a jury could find that the appellants published false and defamatory statements about Mr. Bresler with knowledge that they were false or with reckless disregard of whether or not they were false. The appellants were not entitled to a directed verdict in their favor for this reason and the trial court properly, in our opinion, refused to grant their motion for a directed verdict and for a judgment n.o.v.

4.

We now come to the final contention of the appellants, i.e., that the trial court erred in its charge to the jury in four particulars. These are, (a) by instructing the jury that the constitutional protection was limited to comments relating to Bresler's "official conduct", (b) by instructing that "actual malice" consisted of evil intent, a state of mind best described as spite, hostility or deliberate intention to harm which could be inferred from the language of the publica-

tions in issue, (c) by refusing to instruct in regard to the meaning of "reckless disregard of truth" under the federal constitutional standard, and (d) by instructing that the appellants conceded that the publications "were not true."

It is well settled in Maryland that in considering alleged errors in a charge of the trial court to the jury, we will consider the charge as a whole and will not select, out of the context of the whole charge, individual statements which might, of themselves and out of context, contain inartificial methods of expression or appear to be misleading. *Jones v. Federal Paper Board Co.*, ____ Md. ____, 250 A.2d 653 (1969) (No. 40, Sept. Term, 1968, filed February 25, 1969), and cases therein cited.

It is equally well settled that we will only concern ourselves on appeal with the exceptions to the charge filed by the objecting party at the conclusion of the charge itself. Maryland Rule 554 d and e. *Jones v. Federal Paper Board Co., supra.*

In the present case, the trial court gave a comprehensive and carefully considered charge to the jury.

After advising the jury that the court's instructions in regard to the law were binding upon them, but the findings in regard to the facts were for the jury; that the weight of the evidence is not established by the number of witnesses but by the quality the jury attributed to the testimony; that questions asked by the court should carry no more weight with the jury than those asked by counsel, the trial court then gave the jury the definition of libel as follows:

> "You are instructed that the burden is upon the plaintiff to establish a preponderance of the evidence that the publication imputed to him a crime, or disgraceful, dishonest or immoral conduct or was otherwise injurious to his private character or credit, and if you are unable to conclude from the preponderance of the evidence that the publication bears a meaning ascribed to it by the plaintiff, or if you

find that the evidence is equally balanced on that issue, then your verdict must be for the defendant.

"The law presumes, until the contrary appears, that every person has a good character and has done nothing to forfeit the good opinion of the community. The law regards a good reputation as valuable to its possessor, and the publication of a libel by which a good name is impaired is an injury for which damages may be recovered."

In regard to considering the publication complained of, the trial court stated:

"In considering the publication complained of, you must consider the publication as a whole—the Court would say in this case we are talking about serious, [a series, a] number of publications—and determine the meaning of the publication and how it would be understood by ordinary readers from the entire context thereof with the other facts and circumstances shown by the evidence.

"Where a publication is susceptible of two meanings one of those which would be libelous and the other not, it is up to you to say which of the two meanings would be attributable to it, by those to whom it is addressed or by whom it may be read. In reaching your decision you can consider all the circumstances surrounding the publication, which includes all of the evidence which has been admitted.

"It is no defense that in making the defamatory statement the defendant either repeated or quoted a statement by another. It makes no difference whether a defamatory statement is originated by the defendant or merely repeated by him or it, and I use it, because individual, on the basis of a statement made by it or him.

"You are instructed as a matter of law that one who repeats another's defamatory statement is legally responsible unless the story is true, the repetition

privileged—I will repeat that—unless it is true the repetition is privileged, which I will define for you in a minute what privilege is—or the plaintiff consented to the publication."

In regard to the truth of the publications, the trial court instructed:

"Going to the factor of the truth, there is no contention in this case, it is conceded by the defendant these allegations were not true. That is that Mr. Bresler was guilty of blackmail.

"There is no evidence before you, no contention by the defendant that they were true."

In considering the question of "fair comment", the trial court instructed the jury:

"In matters of public interest, the law recognizes the importance of free discussion and the right to express opinions, comments and criticisms concerning such matters. Thus it accords to the press and the general public the right to comment upon and criticize these matters of public interest freely and openly. But this right to express opinions on matters of public interest is only present where the fact and criticism and comment are drawn are true. It is only insofar as the facts set out by the publisher are true that he would claim the right of free and open criticism of open comment on those facts. Thus at the outset if you find the basis on which the criticism or facts are made are true, then you must not find on the issue of fair comment.

"If, however, you determine that the facts on which the criticism is based are true, then you must decide whether the criticism or expression of opinion complained of was fair. You are instructed that in order for the criticism to be fair comment in the eyes of the law it is not necessary for you to personally agree with it or even the majority of reasonable men would agree with it. It is only necessary the criticism be one which a reasonable man could draw from the fact even though it is not the correct

criticism or opinion of the most reasonable criticism or opinion. Accordingly, if you determine the criticism or opinion in the article complained of was one which an honest person could reach, you must find for the defendant on the issue of fair comment, unless you determine by a preponderance of the evidence that the comment or criticism did not actually represent the opinion of the author, but instead was published with malice or a reckless disregard of whether it was true or false.

"The Court would here emphasize that the newspaper or a publisher has a right and responsibility to attend meetings, to listen to what is going on, and to rely upon people which it knows or has very good grounds to believe are responsible citizens. And such statements repeated and/or published, unless with actual malice, or knowledge that they are false, reckless disregard for whether they are true or false, is not libel.

"The law recognizes the importance of free discussion and criticism and matters of public interest to the extent that it grants immunity even with respect to the publication of foolish and prejudicial criticism if they are not published with malice, knowledge of their not being true, it is knowledge they are false, or reckless disregard of whether they are true or false. The right of comment or criticism that has been explained to you is the same whether the defendant is a newspaper or a member of the public generally.

"If you find that the publication complained of relates to a matter of interest to one or both of the parties to the publication or communication and that the means of publication was reasonably adapted to the protection of that interest, you are instructed that the publication is qualifiedly privileged and your verdict should be for the defendant unless you find that the publication was made with actual malice, knowledge of its falsity, or reckless disregard of whether it was true or false."

The trial court then gave examples of absolute and qualified privileges and told the jury:

> "You are instructed the publication is qualified[ly] privilege[d] and your verdict should be for the defendant unless you find again the publication was with actual malice, knowledge of its being false or reckless disregard of whether it was true or false."

The trial court then defined "malice" quoting from *Black's Law Dictionary* as follows:

> "* * * the Court would indicate that Black's Law Dictionary indicates malice as follows: the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances of law would imply an evil intent."

An additional instruction was then given on the burden of proof on the plaintiff, as follows:

> "In addition thereto, the Court has instructed you that if you determine the defense or qualified privilege asserted by the defense applies to this case, that is fair comment privilege, the plaintiff must then prove by a preponderance of the evidence that the defendant published the article complained of with actual malice toward the plaintiff. Therefore, the Court will now again define for you another indication of what malice is. Actual malice involves the state of mind that the defendant, best described as spite, hostility or deliberate intention to harm. Further, although honest indignation and strong words are not evidence of express malice, or actual malice, actual malice may also be present in the eyes of the law if you determine by a preponderance of the evidence that the defendant's conduct, published in the article complained of constituted malice, reckless disregard of whether they are true or false.
>
> * * *
>
> "* * * in determining whether there was actual malice on the part of the defendant, in the publication of the articles complained of, you may consider all the

relevant evidence in the case, including the character of publication, the circumstances which inspired its publication, the presence or absence of a reasonable basis for making the statement, and the presence or absence of provocation.

"With respect to your consideration of presence of actual malice on the part of defendant, you may infer its presence from the language or circumstances of the publication, but this may be done only if the character of the publication is so excessive, intemperate, unreasonable and abusive as to defy any other reasonable conclusion than that the defendant was moved by actual malice toward the plaintiff."

The trial court then instructed in regard to compensatory, nominal and punitive or exemplary damages. In regard to punitive damages, the trial court told the jury:

"Punitive damages are claimed in this case.

* * *

"Punitive damages sometimes called exemplary or vindictive damages, may, in certain circumstances, be awarded by you, in addition to the verdict for compensatory or nominal damages. Punitive damages do not partake of compensation to an injured plaintiff. Rather, the law permits juries in civil cases to assess punitive damages against the defendant as punishment for outrageous conduct and as [a] deterrent to others to refrain from engaging in such conduct.

"Punitive damages may be assessed against an individual defendant when the publication of a libel was done with actual malice toward the plaintiff, or when the defendant acted with recklessness or wanton indifference to the rights of the plaintiff.

"In deciding whether in the publication complained of the defendant was acting with actual malice toward the plaintiff, you should consider all the circumstances and evidence of the case. You should consider the intent with which the matter was published, the motives of the defendant in publishing the matter, the presence or absence of provocation for the

publication, the presence or absence of reasonable grounds for making the statement. You shall also consider the manner in which the defendant received the information on which the publication was based, whether the defendant exercised an honest judgment or whether the publication was based on information received from persons whom the defendant believed to be reliable persons. If after weighing and considering these facts you are convinced the defendant acted with actual malice toward the plaintiff, then you may, I am not saying you shall, you may, assess punitive damages against the defendant. Whether to do so, even if you find actual malice, is within your sound discretion; the law does not require you to assess punitive damages. If you decide to assess punitive damages the amount of such damages is left to your good judgment."

In regard to blackmail, the trial court gave the following definition:

"Black's Law Dictionary defines [blackmail as] the extortion of money by threats or overtures toward criminal prosecution or the destruction of a man's reputation or social standing."

The trial court further told the jury:

"* * * you must find, as I have told you the burden of proof is on the plaintiff to prove by a preponderance of evidence the allegation of libel. With the law that I have given you you are obligated to find malice, knowledge of the falsity, reckless disregard of what is true or false in order to find [for] the plaintiff. And if you find these elements then you may find for the plaintiff. Otherwise, you will find for the defendant."

After hearing the exceptions of counsel for the defendants to the charge (counsel for the plaintiff made no exceptions), the trial court gave the following additional instruction:

"The Court will give you one additional instruction as a matter of law, that in a suit for libel you have a treating differently of different people. A

public official or a public figure, the law permits under the question of privilege or fair comment a wider latitude. In other words, in matters that are of general public interest, [as] the articles complained of were, if you find by a preponderance of the evidence was public activities, there is a constitutional protection for publication of matters regarding a public official or a public figure. There is no denial in this case Mr. Bresler was not a member of House of Delegates and a candidate for Comptroller of the State of Maryland when the last article was published. And the plaintiff cannot recover unless you find, as I say again, by a preponderance of the evidence, that the articles were published with actual malice, knowledge of their being false, or reckless disregard of whether they were true or not."

After further objection by counsel for the defendants, the trial court gave a further additional instruction as follows:

"Very well, Mr. Foreman and gentlemen of the jury: The Court added to my original instruction regarding public officials, will include public figure, because in the manner which it was done I am of the opinion there may be some misconception of exactly what I meant with the original instructions as to public officials and public figures.

"I am going to give you the additional instruction, which is the law on this subject. There is no contention here that the statements regarding blackmail were true. The Constitutional guarantee requires a rule that prohibits a public official or public figure from recovering damages for defamatory falsehood relating to his official conduct unless he proves that the statements were made with actual malice, that is with knowledge that it was false or with reckless disregard of whether it was false or not. The same thing is said in the same vein, definition of malice is constitutionally insufficient where discussion of public affairs is concerned unless the plaintiff establishes that the utterances were false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true."

Counsel for the defendants (appellants) then made the following objections:

> "I renew my objection, Your Honor, in view of the prior instructions that have gone before this, in which malice is averted to as involving hostility, that this should be made clear to the jury that evidence of evil motive, ill will, hostility, does not constitute malice within the definition of the Constitution. And secondly, Your Honor, I object to the construction on the ground that it does not make it clear that Constitutional protection to comment upon public figures with respect to their public - their activities in the public interest as opposed to their official conduct because they are in the official , they have no official duties and are not officials."

(a)

The appellants contend, first of all, that the trial judge erred in instructing the jury that the constitutional protection was limited to comments relating to Mr. Bresler's "official conduct". The appellants base their contention on the portion of the charge given in the second additional instruction in which the trial court stated in part, "The Constitutional guarantee requires a rule that prohibits *a public official or public figure* from recovering damages for defamatory falsehood relating to *his official conduct* unless he proves that the statements were made with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was false or not." (Emphasis supplied) Earlier in the charge, the trial court had instructed the jury, "A *public official or a public figure*, the law permits under the question of privilege or fair comment a wider latitude. In other words, *in matters that are of general public interest*, [as] the articles complained of were, if you find by a preponderance of the evidence was public activities, there is a constitutional protection for publication of matters regarding *a public official or public figure*. There is no denial in this case that Mr. Bresler was not a member of House of Delegates and a candidate for Comptroller of the State of

Maryland when the last article was published. And the *plaintiff cannot recover* unless you find, as I say again, by a preponderance of the evidence, that the articles were published *with actual malice, knowledge of their being false, or reckless disregard of whether they were true or not.*". (Emphasis supplied) The trial court further stated: "In reference to the last instruction I gave you, with reference to his official conduct *or words* as a public official or a public figure."

The trial court, in effect, in the entire charge clearly instructed the jury that in order for the plaintiff to recover it must find by a preponderance of the evidence that the *New York Times* test had been established for *both* Bresler's activities as a public official and as a public figure. We have indicated that this was a *more favorable* instruction for the defendants than they were entitled to have received in light of the factual circumstances. It was also probably more favorable to the defendants than the decision of the Supreme Court in *Butts* justified for "public figures."

In *New York Times,* Mr. Justice Brennan, for the Supreme Court, articulated the rule in regard to "public officials" as follows:

> "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is with knowledge that it was false or with reckless disregard of whether it was false, or not." (376 U.S. at 279-80, 84 S.Ct. at 726, 11 L.Ed.2d at 706)

In the concurring opinion of Mr. Justice Goldberg, concurred in by Mr. Justice Douglas, which advocated an even more stringent constitutional guarantee than the majority, it was pointed out that:

> "This is not to say that the Constitution protects defamatory statements directed against the private conduct of a public official or a private citizen." (376 U.S. at 301, 84 S.Ct. at 737, 11 L.Ed.2d at 721)

In *Butts* and *Walker*, federal constitutional protection was extended to publications in regard to the activities of "public figures." The opinion of the Court in *Butts* and *Walker* was written by Mr. Justice Harlan, in which Mr. Justice Clark, Mr. Justice Stewart and Mr. Justice Fortas joined. These four justices were of the opinion that the federal rule in regard to "public figures" was not as vigorous as the rule enunciated in *New York Times* in regard to public officials. Mr. Justice Harlan stated, in part, as follows:

> "In *Time, Inc. v. Hill, supra,* 385 U.S., at 390, 87 S.Ct. at 543 we counseled against 'blind application of *New York Times Co. v. Sullivan*' and considered 'the factors which arise in the particular context.' Here we must undertake a parallel evaluation." (388 U.S. at 148, 87 S.Ct. at 1988, 18 L.Ed.2d at 1107)
>
> * * *
>
> "* * * the rigorous federal requirements of *New York Times* are not the only appropriate accommodation of the conflicting interests at stake. We consider and would hold that a 'public figure' who is not a public official may also recover damages for a defamatory falsehood whose substance makes substantial danger to reputation apparent, *on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers.*" (Emphasis supplied) (388 U.S. at 155, 87 S.Ct. at 1991, 18 L.Ed.2d at 1111)
>
> * * *
>
> "Where a publishers' departure from standards of press responsibility is severe enough to strip from him the constitutional protection our decision acknowledges, *we think it entirely proper for the State to act not only for the protection of the individual injured but to safeguard all those similarly situated against like abuse.*" (Emphasis supplied) (388 U.S. at 161, 87 S.Ct. at 1994, 18 L.Ed.2d at 1114)

Mr. Chief Justice Warren, however, whose concurrence made up the majority of five, was of the opinion that the *New York Times* rule in regard to "public officials" should be applied in full vigor, to "public figures."

In view of the close decision in the Supreme Court, it is not entirely clear what the correct rule is in regard to "public figures", but, as we have already indicated, it is of no importance in the present case because the trial court applied the *New York Times* rule to the publications relating to Bresler either as a "public official" or as a "public figure" adopting, in effect, the position of the Chief Justice in *Butts* and *Walker.*

The trial court instructed the jury a number of times that to find for the plaintiff the jury must find, by a preponderance of the evidence that the publication was with actual malice, knowledge of its falsity or reckless disregard of whether it was true or not—substantially in the language of the *New York Times* test. Indeed in several instances the test was broader than that of *New York Times* as it was not always limited to a "public official" or a "public figure." This however, was favorable to the defendants and injurious, if at all to the plaintiff, and, as we have stated, the appellants cannot complain of this.

As Mr. Justice Harland stated in *Butts:*

> "The impact of a jury instruction 'is not to be ascertained by merely considering isolated statements but by taking into view all the instructions given and the tendencies of the proof in the case to which they could possibly be applied.' *Seaboard Air Line R. Co. v. Padgett,* 236 U.S. 668, 672, 35 S.Ct. 481, 482, 59 L.Ed. 777." (388 U.S. at 156-57, 87 S.Ct. at 1992, 18 L.Ed.2d at 1112)

This is in accord with the usual Maryland rule as we have already stated. In our opinion, considering the charge as a whole, the jury understood that it was required to find from a preponderance of the evidence that the *New York Times* rule applied to the activities of Bresler both as a public offi-

cial and as a public figure. We find no error in the charge in this regard of which the appellants can complain.

(b)

The appellants next contend that the trial court erred in instructing the jury that actual "malice" consisted of evil intent, a state of mind best described as spite, hostility or deliberate intent to harm which could be inferred from the language of the publications in issue.

As we have already seen the trial court did define malice as the "intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances of the law would imply an evil intent" and further that "actual malice involves the state of mind * * * [of] the defendant, best described as spite, hostility or deliberate intention to harm." The trial court also stated that the jury might infer the presence of actual malice "from the language or circumstances of the publication", but added this quite restrictive instruction "but this may be done only if the character of the publication is so excessive, intemperate, unreasonable or abusive as to defy any other reasonable conclusion that the defendant was moved by actual malice toward the plaintiff."

Here again, the appellants separate one aspect of the charge from the charge as a whole and claim that this was error under the decision in *Rosenblatt v. Baer, supra* and *Beckley Newspaper v. Hanks, supra,* as well as *Washington Post Co. v. Keogh,* 365 F.2d 965 (D.C. Cir. 1966), *cert. denied,* 385 U.S. 1011 (1967).

The appellants overlook, however, that in a libel action in which punitive damages are sought, it was proper to define "actual malice" as requiring a finding of ill will, spite, hostility and a deliberate intention to harm." Later in the charge the trial judge indicated that if the jury found that the libel was done with "actual malice" toward the plaintiff "or when the defendant acted with recklessness or wanton indifference to the rights of the plaintiff", the jury could assess punitive damages.

In *Butts*, the opinion of the Court written by Mr. Justice Harlan, indicates that the State law in regard to punitive damages is to be considered and applied. He stated, for the Supreme Court:

> "Moreover, punitive damages require a finding of 'ill will' under general libel law and it is not unjust that a publisher be forced to pay for the 'venting of his spleen,' in a manner which does not meet even the minimum standards required for constitutional protection." (388 U.S. at 161, 87 S.Ct. at 1994, 18 L. Ed.2d at 1114)

See also *Snyder v. Fulton*, 34 Md. 128, 138, 6 Am. R. 314, 321 (1871).

As we have indicated, when the trial court instructed the jury in regard to the constitutional protection in regard to comment upon the activities of Mr. Bresler as a "public official" or as a "public figure", it stated the formula in *New York Times* as the applicable test and limited the jury to a finding based on that test. This was done several times, the final instruction being made after considering the objections of counsel for the defendants, giving the exact language from *New York Times*.

In our opinion, taking the charge as a whole and considering the last instruction given by the trial court, the jury was instructed and must be assumed to have understood that it must find that the publications in issue were made "with knowledge that it was false or with reckless disregard of whether it was false or true."

In our opinion, the appellants suffered no prejudice from the instruction, considered as a whole, in this regard. If there was any prejudice, it was suffered by the plaintiff, not by the defendants.

(c)

The appellants next argue that the trial court erred in its instructions by refusing to instruct in regard to the meaning of "reckless disregard of truth" under the federal constitutional standard.

In their Request to Charge No. 4, the defendants requested an instruction that "Reckless disregard of the truth is more than mere negligence on the part of the newspaper. The plaintiff must show by a preponderance of the evidence that the defendants published defamatory false statements with a high degree of awareness of their probable falsity." This instruction was requested in connection with the article in the June 9, 1966 issue of the News Review written jointly by Mr. and Mrs. Skolnik.

In our opinion, the trial court was under no obligation to give a further definition of the phrase "reckless disregard of the truth" as the phrase is sufficiently definite in itself and sufficiently presented the issue to the jury. The charge, taken as a whole, was in our opinion sufficient in this regard. As we have heretofore indicated, technical precision of individual words is not required in instructions to the jury, and if the charge as a whole fairly presents the issue to the jury, there is no prejudicial error. *Curtis Publishing Co. v. Butts,* 388 U.S. at 156-7, 87 S.Ct. at 1992, 18 L.Ed.2d at 1112; *Jones v. Federal Paper Board Co. supra.*

(d)

Finally, the appellants contend that the trial court erred in its instructions to the jury by instructing that the defendants conceded that the publications "were not true." As already stated, there was no plea of justification, i.e., that the publications were true. Moreover, counsel for the defendants stated to the trial court:

> "What I am saying is we don't contend that the plaintiff committed blackmail, that is all. We don't intend [contend] the plaintiff committed the crime of blackmail."

The trial court instructed the jury:

> "Going to the factor of the truth, there is no contention in this case, it is conceded by the defendant these allegations were not true. That is that Mr. Bresler was guilty of blackmail.

"There is no evidence before you, no contention by the defendant that they were true."

The appellants contend that the term "blackmail" in the context in which it was used was an expression of opinion regarding a public proposal. The subheading "Blackmail", however, was not used as an expression of opinion by any one other than the publishers, themselves, and had nothing whatever to do with any "public" proposal. As we have indicated the charge of blackmail was false, the appellants knew that a charge of blackmail was false, but they published it with such knowledge and emphasized the charge in a subheading with block type.

The jury could well have found that the false and defamatory statement was published with a "reckless disregard of truth" and lost any qualified privilege it might otherwise have had. Cf. *Stevenson v. Baltimore Baseball Club*, 250 Md. 482, 243 A.2d 533 (1968).

In any event, we do not find that the appellants objected to this portion of the charge and this alleged error is not before us for consideration. Maryland Rule 554 d and e; *Jones v. Federal Paper Board Co., supra.*

Finding no prejudicial error in the rulings and charge of the trial court, the judgment will be affirmed.

JUDGMENT AFFIRMED, THE APPELLANTS TO PAY THE COSTS.

APPENDIX B

CONSTITUTIONAL PROVISIONS INVOLVED

U. S. Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U. S. Constitution, Amendment XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX C

The Washington Post

TUESDAY, JULY 22, 1969

Phillips Hits 'Blackmail' In Metro Plan

By Richard Prince
Washington Post Staff Writer

Washington Democratic leadership yesterday told the City Council it should temporarily give up the long-sought-after subway rather than submit to building the controversial Three Sisters Bridge.

The building of the Potomac River span is part of the price being asked by Rep. William H. Natcher (D-Ky.) head of the House Appropriations subcommittee on the District, in order to release subway money.

* * *

Democratic National Committeeman Channing E. Phillips, who said he was speaking for the local Democratic leadership and "the city's Democratic majority," said yesterday Natcher's position amounted to "blackmail" and called upon the city government to "stand up like men against our colonial master."

If the subway must be sacrificed for the time being, he said, that is "the price of freedom" that "has always been high."

"It is being said that the subway is more important than the Three Sisters Bridge," Mr. Phillips told a press conference. "But everyone knows that blackmailers, when successful, almost always demand more and more. If the Three Sisters Bridge can be obtained for this year's subway appropriations, the North Central Freeway can be forced on the community by withholding next year's subway funds. This same method can then be used to force other programs on the District government.

"If Congressman Natcher is to run the District government, let him do it directly and openly. There is no need for the City Council to do his dirty work for him."

* * * *

The Evening Star
Washington, D. C., Tuesday, July 22, 1969

D.C. Council Calls Off Subway-Roads Session

By STEPHEN GREEN
and WILLIAM BASHAM
Star Staff Writers

The District City Council today abruptly called off a meeting scheduled for this morning to resolve Washington's subway-freeway impasse.

In closed session yesterday the council had agreed to approve construction of the Three Sisters Bridge in return for congressional release of subway construction funds.

However, several council members decided overnight that they need a guarantee that the House of Representatives would, in fact, release the $18.7 million subway construction money if the council should take the politically sensitive step of approving the bridge.

* * *

Several council members asked Chairman Gilbert Hahn Jr. to visit Rep. William Natcher, D-Ky., to obtain a guarantee that he will agree to release of the subway funds, if the council okays the bridge. However, Hahn reportedly is reluctant to undertake the visit since he is a Republican and Natcher, who has been the key figure in holding up subway funds, is a Democrat.

* * *

Led by Natcher, the House has refused to appropriate $18.7 million in subway construction funds until the city agrees "beyond recall" to build the Three Sisters Bridge and other segments of the interstate road system that Congress ordered built in the 1968 Highway Act. The Senate has approved the appropriation.

Freeway foes contend the roads and bridge will bring unnecessary traffic to the city, damage its vitality and destroy needed housing.

The Rev. Channing E. Phillips, District Democratic national committeeman, reiterated his opposition to the Three Sisters Bridge yesterday and Bruce Terris, chairman of the District Democratic Central Committee, said Phillips was speaking for the committee.

Phillips charged that Natcher and Congress are attempting to "blackmail" the city. "I believe the freeways should not be built because they are bad for the city. But this is not the issue . . . the issue is whether the city government will bow now to congressional threats. While the subway . . . is important, the price of freedom has always been high," he said.

NEW YORK TIMES - October 27, 1968

'BLACKMAIL' LAID TO 2 JEWISH UNITS

Orthodox Rabbi Scores Plan on Religion in Israel

A leader of Orthodox Judaism charged the major Conservative and Reform rabbinic groups in this country with "attempted blackmail" yesterday in what he described as their efforts to "foist" upon Israel "unwelcome religious practices and philosophies."

The Orthodox leader, Rabbi Zev Segal, the president of the Rabbinical Council of America, referred to a joint agreement reached last Wednesday by 60 Conservative and Reform leaders to cooperate in developing a "liberal religious alternative" to Orthodox Judaism in Israel.

For years, the Central Conference of American Rabbis (Reform) and the Rabbinical Assembly (Conservative) have been endeavoring to strengthen their influence in Israel. But under Israeli law the right to perform marriages and exercise other religious functions is reserved for Orthodox rabbis.

First Joint Meeting

Participants in Wednesday's meeting included Rabbi Ralph Simon, the president of the Rabbinical Assembly, and Rabbi Levi A. Olan, the president of the Central Conference. It was the first joint session of the leaders of the two groups.

In his statement yesterday, Rabbi Segal was particularly critical of a comment made at the meeting by Rabbi David Polish, spiritual leader of the Beth Emet Free Synagogue in Evanston, Ill.

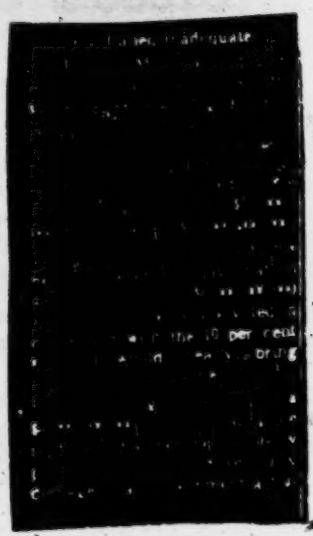
Emphasizing the need for continuing identification with Israel, Rabbi Polish told the Conservative and Reform leaders that "so far we have manifested this identity not only financially but by bringing influence to bear on Israel's economic policies."

"We have no less a right and a claim to influencing, for a time, its religious policies," Rabbi Polish said.

To this, Rabbi Segal replied: "By implying that the financial support of the Reform and Conservative movements in the United States of Israel's needs is conditioned upon Israel's acceptance of their religious ideologies, the leaders of the Reform and Conservative movements are engaging in a form of attempted blackmail that is repugnant to all for whom the ideal of religious freedom is precious."

* * * *

'BLACKMAIL' TERM USED ON TAX SNAG



* * * *

The Evening Star

THURSDAY, MAY 2, 1968

Letters to the Editor

Black Business

* * * *

SIR: Marion Barry has announced that if the people whose businesses were burned out want to come back they are going to have to give 51 percent control to Negroes or else be burned out again.

The answer to this sort of blackmail should be plain. The white merchants should collect their insurance and leave the ghetto. Let the debris remain. Leave the blackmailers without shops and other conveniences provided in the past. To comply with Barry's threat is to take a step toward establishing the kind of country that cannot endure. Government by blackmail is unendurable.

Emett Harris.

The Washington Post
THURSDAY, FEBRUARY 29, 1968

Debasing the Debate

The tone and temper of the Vietnam debate is getting uglier at just the moment when the need is greatest for a national display of unity and resolve. It is one thing for Sen. Fulbright and the war critics on his Foreign Relations Committee to challenge the President's Vietnam policy and call for a review. It is nothing less than blackmail to make "the prospect of negotiation" with an apparently intransigent enemy the price for passage of appropriations for the Asian Development Bank "and a lot of other bills."

In the first place, the idea of robbing the Asian Bank to pay off an old score with the President makes no sense unless the Senators who advocate it are prepared to introduce a measure to repeal the Tonkin Resolution and advocate this country's withdrawal from the Asian scene. The Asian Development Bank—and the concern for economic development it carries with it—is the single most important non-military contribution this country has made to the betterment of Asian life and the promotion of political stability of the area in many years. To deny it the $200 million in special funds it so urgently needs to operate effectively is to create the very impression the war critics would presumably like to avoid—that the United States has nothing much to offer Asians in their search for security save shot and shell.

Before anything else is done, the Foreign Relations Committee members should take the advice of one of their most distinguished and statesmanlike colleagues, Sen. Cooper, and forswear this kind of senseless pressure tactics in a time of serious crisis. That much said, it needs to be added that it took a great deal of deep-seated bitterness to produce so crude a power play—and this bitterness, justified or not, is a fact of political life that is not going to be washed away by the kind of appeal for unity the President made in Dallas the other day.

* * * *

The New York Times

THURSDAY, FEBRUARY 8, 1968

The Mayor Acts

Mayor Lindsay's ultimatum to the striking sanitationmen who have held the city in bondage since last Friday is precisely the action required to save the city from disaster. With New York buried in garbage and a major snowstorm impending, it would have been suicidal to wait—and wait—and wait for the union to end its illegal strike.

The Mayor will have overwhelming public support in his declaration that the city cannot submit to "blackmail" by any group of unionized civil service workers, perverting its control over a vital public service into an instrument of extortion. Collective bargaining cannot go forward while the city is being held for ransom as surely as if it had been captured by a band of pirates.

SUNDAY, FEBRUARY 11, 1968

Break in the Siege

The immediate reaction of all New Yorkers to the end of the criminal sanitation strike must be one of overwhelming relief that the mountains of filth will be removed from the streets before the city is devastated by disease and fire. But the arrangement under which Governor Rockefeller has bought the return to work is as bizarre as anything that has happened in all the nine days of nightmare since this strangest of civil service tie-ups began.

Mayor Lindsay has properly stood fast in his refusal to pay "blackmail" to the sanitation union while its members were off their jobs in defiance of law, court order and civic responsibility. The Governor has given a host of rationalizations for his refusal to call out the National Guard. Undoubtedly the two that were controlling were politics and the threat of a general strike held over the city by the Central Labor Council.

The Washington Post
FEB 8 - 1968

Lindsay Bids Garbagemen Return

NEW YORK, Feb. 7 (UPI) —Mayor John V. Lindsay, warning that New York City "will not pay blackmail," tonight told striking sanitation workers that if they do not return to work by 7 a.m. Thursday he will seek state help to remove tons of garbage from streets and sidewalks.

* * *

In one of his strongest statements yet, Lindsay noted that the central issue of this strike is whether New York can be "blackjacked into awarding exorbitant contract demands to a union simply because that union is willing to break the law."

"The city will not submit," he said. "It will not pay blackmail."

THE EVENING STAR
Washington, D. C., Friday, February 9, 1

Lindsay Blasts Panel's Plan To End Strike

NEW YORK (AP) — Mayor John V. Lindsay rejected early today the recommendations of Gov. Nelson A. Rockefeller's special panel for ending the 8-day-old sanitation men's strike.

Hours later Rockefeller turned dow down Lindsay's renewed call for National Guard help in removing the tones of festering garbage.

The striking sanitation union had agreed to the special panel's offer of a $425 annual pay increase, only $25 above a state mediator's proposal made before the strike. The city had also rejected the $400 settlement offer.

'Very Hopeful'

Asked if he thought the Guard would be called out, Rockefeller replied: "No, I honestly don't."

The governor said he was "very hopeful" that Lindsay would change his mind about the formula offered by the special mediators.

Shop stewards for the strikers voted unanimously to accept the recommended settlement, which would have raised their pay $425 a year retroactive to July 1.

At a predawn news conference Lindsay declared: "I said yesterday the city would not pay blackmail in order to conclude this strike. The proposed settlement, in my view, asks the city to pay a little blackmail."

THE EVENING STAR A-2[illegible]
Washington, D. C.
Thursday, May 29, 1969

Social Welfare Parley's Moves Please Militant

By BETTY JAMES
Star Staff Writer

NEW YORK — The beleaguered National Conference on Social Welfare moved to its close today on a first note of harmony.

Dr. George A. Wiley, executive director of the National Welfare Rights Organization — which has twice disrupted the confernece since it began Sunday night — told a press conference yesterday he was "very satisfied" with the way the conference had responded to his group's demands.

But many of the conference's estimated 7,000 delegates disagreed, openly calling the welfare rights group's tactics on Sunday night "blackmail." At the opening session, members of the rigst organization formed human chains around the doors of the New York Hilton Hotel ballroom, refusing to let delegates leave until they had contributed to the organization.

Later, the conference voted to raise $35,000 to allow at least 250 poor people to attend next year's conference, an action still to be ratified by mail ballot.

The Philadelphia Welfare Rights Organization yesterday blasted that decision, saying, "Robbery for whatever reason will never solve the basic problems of poverty."

The statement declared, "The Philadelphia Welfare Rights Organization was not part of and does not condone the tactics and 'supposed' militant action on the part of the National Welfare Rights Organization's staff and some of its members . . . Society is already too violent."

Wiley, though conceding the Philadelphia chapter was "entitled to their opinion," disagreed that the Sunday tactics constituted "robbery." Many people at the conference had stopped him in the last few days to praise the "honest dialogue" that resulted after the opening session, he said.

In a separate action, the conference created a committee to raise funds for the welfare rights group. About $2,000 has been raised so far. In addition, delegates themselves have contributed about $4,000 to the rights organization, which has set up solicitation booths near the registration desk.

The Philadelphia chapter also attacked the national organization for accepting a $434,930 grant from the U.S. Labor Department to help implement the Work-Incentive Program for Relief Recipients (WIN), which the Philadelphia group said is designed to remove mothers from the home and place them in "slave labor" jobs.

WASHINGTON POST, February 28, 1968, page D7

Wire Services Block New Paper, Chalk Says

By George Lardner Jr.
Washington Post Staff Writer

Financier O. Roy Chalk protested in absentia to the Senate Antitrust Subcommittee yesterday that the Nation's big wire services were unfairly blocking his attempts to start a daily newspaper here.

The editor of Chalk's weekly Washington, D.C., Examiner, Jack Limpert, told the Subcommittee that United Press International had initially demanded what amounted to a "blackmail payment" to keep it from entering the daily newspaper field.

"We are thus at the mercy of our competitors, who set the rules of the game," Chalk reported to the Subcommittee.

Chalk himself was in Central America yesterday and Limpert presented the financier's prepared statement.

Both UPI and the Associated Press, Chalk complained, refuse to supply their news services to papers without a substantial paid circulation.

Most of the Examiner's 200,000 copies a week are distributed free from racks on Chalk's D.C. Transit and W. V. & M. Coach Co. buses. Chalk said this was the only way—short of a "huge, go-for-broke investment the first year"—that Examiner could build up advertising and readership.

The Audit Bureau of Circulation, the Subcommittee was told, has similar restrictions. Most advertisers, Chalk said, require ABC audits as proof of circulation, but ABC, a newspaper-supported cooperative, won't make the audits for publications with a paid circulation of less than 50 per cent.

The system, he said, protects Washington's three dailies, The Washington Post, the Evening Star and the Daily News, and effectively stifles competing new voices.

"It may take us five years to build up to 100,000 paid circulation," Chalk said in his statement.

UPI said it would save its reply for a March 5 hearing before the Subcommittee. Reached in New York, UPI General Sales Manager Wayne Sargent said he would prefer to read in full what Limpert, a former UPI regional executive, and Chalk had said.

TABLE OF CONTENTS

STATEMENT 1

ARGUMENT:

1. Public Official and Public Figure 2
2. Out of Context 4
3. Accuracy 5
4. Instructions to the Jury 7
5. Relevancy 11
6. Ill Will 13
7. Reasons for Denying the Writ 15

CONCLUSION 16

TABLE OF CITATIONS

CASES:

Beckley Newspapers Corp. v. Hanks, 389 U.S. 81, 88 S.Ct. 197 . . . . . 3, 8

Curtis Publishing Co. v. Butts, 388 U.S. 130, 87 S.Ct. 1975 . . . . . 3, 7, 11, 14

Dorr v. United States, 195 U.S. 138 12

Garrison v. Louisiana, 379 U.S. 64 3

Henry v. Collins, 380 U.S. 356 (1965) 3

New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686 . . . . . 2, 7, 8, 14, 15

Rosenblatt v. Baer, 383 U.S. 75, 86 S.Ct. 669 . . . . . 2, 8

Seaboard Air Line R. v. Padgett, 236 U.S. 668 7

St. Amant v. Thompson, 390 U.S. 727 3

Time, Inc. v. Hill, 385 U.S. 374, 87 S.Ct. 534 . . . . . 3, 11, 15

PUBLICATIONS:

Prosser on Torts, 2nd Ed. (1955) 12

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners

v.

CHARLES S. BRESLER,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STATEMENT

The facts in the case are fully presented in the brief of the petitioners, particularly in Appendix A thereto (A. 1-24), and are therefore not repeated herein. The Court's attention is especially invited to pages A-2 and A-3, which contain a concise and accurate statement of the background relating to the two principal newspaper articles.

ARGUMENT

1. Public Official and Public Figure

Petitioners claim constitutional protection because respondent allegedly was both a public official and a public figure. Although the Court of Appeals of Maryland disagreed but accepted this premise *arguendo* (A. 31-32), none of the libelous publications contained any criticism of respondent's *official* conduct, either as a member of the Maryland House of Delegates from another county or (seven months after the "blackmail" articles) as a candidate for the office of Comptroller of Maryland. They are all directed at him as a private developer of land in the Greenbelt area.

Petitioners' statement of the Questions Presented cites only *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, which limited its application to the official conduct of public officials. In a separate concurring opinion in that case, Mr. Justice Goldberg, joined by Mr. Justice Douglas, said: "This is not to say that the Constitution protects defamatory statements directed against the private conduct of a public official or private citizen."

In the later case of *Rosenblatt v. Baer*, 383 U.S. 75, 86, 86 S.Ct. 669, 676, the Court said:

> "Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds its, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in *New York Times* are present and the *New York Times* malice standards apply."

And, as the footnote said:

> "The employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy."

A State Delegate would hardly have "substantial responsibility for or control over the conduct of governmental affairs" (383 U.S. 85, 86 S.Ct. 676).

Subsequently, in *Time, Inc. v. Hill,* 385 U.S. 374, 390, 87 S.Ct. 534, 543, this Court counseled against ". . .blind application of *New York Times Co. v. Sullivan,* relating *solely* to libel actions by public officials. . ." (emphasis supplied).

Likewise, in *Beckley Newspapers Corp. v. Hanks,* 389 U.S. 81, 88 S.Ct. 197, *Garrison v. Louisiana,* 379 U.S. 64, *Henry v. Collins,* 380 U.S. 356, and *St.Amant v. Thompson,* 390 U.S. 727, the alleged libels pertained solely to the *official conduct* of the public officials concerned.

It was because of the continued insistence of petitioners that respondent was a public official and that strict adherence to the *New York Times* standard was required, that the trial court repeatedly gave the *New York Times* instruction pertaining to the

> "federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." (376 U.S. 279-280, 84 S.Ct. 726).

It is true that counsel for the respondent conceded in his *opening statement* that respondent was a public figure, as petitioners had certainly made him one in Greenbelt. However, it is also true that:

a. The trial court specifically instructed the jury that: "The Court will tell you that the opening statements or closing argument of counsel is not evidence." (E. 198) and repeated that admonition (E. 199).

b. The Plea and Answer filed by petitioners in the trial court asserted the constitutional defense of "public official" (E. 6), but not that of "public figure", although *Curtis Publishing Co. v. Butts,* 388 U.S. 130, 87 S.Ct. 1975,

had been decided six months before this case came to trial and, under the Maryland Rules, petitioners could readily have obtained leave of court to amend during that time.

c. Petitioners did not ask the trial court to instruct the jury that respondent was a public figure and a public official, or to define those terms for the jury.

2. Out of Context

Petitioners' principal contention is that they were denied the constitutional protection because the word "blackmail" was extracted out of context and given a meaning which is wholly foreign to the two articles in which that word appeared. Petitioners particularly complain in their brief (p. 17) of ". . . the court's total disregard for the context of the articles. . ." The record clearly disputes that contention:

a. The trial court specifically instructed the jury (A-42 and E. 189): "In considering the publication complained of, you must consider the publication as a whole . . . and how it would be understood by ordinary readers from the *entire context* thereof. . ." (emphasis supplied).

b. It was the petitioners who took the word "blackmail" out of context in the first article and printed it as a subheading in bold-face type (E. 212).

c. It was the petitioners' reporter who took the word "blackmail" out of context in the second article and gave it emphasis. As the reporter said (E. 152): ". . . I paraphrased his sentence but I selected out the word 'blackmail' was his word and I wanted to denote it was his word I was picking up. . .".

d. Dorothy Sucher, a witness for petitioners, who wrote the first "blackmail" article, admitted on cross-examination that ". . . I didn't use all my notes in writing the story" (E. 164), although she did use that part of her notes which quoted the speakers who used the words "blackmail" and "blackmailing scheme.".

e. Councilman David Champion (E. 212) and James Martin (E. 218) considered the accusations of "blackmail" serious enough to deny these charges before a heated audience (respondent was not there to defend himself).

As to the meaning and relevancy of the word "blackmail", petitioner Skolnik, who has three degrees including a Ph.D., said he knew blackmail "is somewhat in the category of a crime" (E. 32). Mayor Smith, a witness for petitioners, who presided at both reported City Council meetings, testified on cross-examination that "In my opinion there was nothing to justify the use of the word 'blackmail' by anyone from the audience" (E. 132).[1] Mary Louise Miller Williamson, the witness for petitioners who wrote the second "blackmail" article, testified that: "There is no connection as far as I can see between what Mr. Bresler, what the situation—the offer, there is no relation between that and a crime of blackmail. There is a difference" (E. 155). Mrs. Sucher, the first reporter, also knows that blackmail is a crime (E. 165).

The jury, having been instructed to consider the publication as a whole, must have determined that petitioners wanted the readers of the News Review to believe that respondent had been accused of the crime of blackmail, by publishing the charge in two editions of the newspaper, and by featuring the word "blackmail" in a subheading in heavy type for those who might miss the accusation in the body of the first article.

3. Accuracy

Petitioners claim constitutional protection on the ground that they published an accurate report of a public debate. The record shows otherwise.

The second "blackmail" article stated that "Albert Herling suggested skulduggery in the September court postpone-

---

[1] The article pertaining to the second meeting (E. 217) noted that "The mayor occasionally had to caution them to refrain from engaging in personalities." Despite this, the newspaper quoted the "blackmail" and alleged "skulduggery" accusations.

ment" (E. 218). The word "skulduggery" is defined, among other things, as "dishonesty" (A. 36). When questioned about the use of that word in the second article, petitioner Skolnik said (E. 43): "All I am saying is there 'skulduggery' is the word that the reporter used to interpret what Mr. Herling was saying." Petitioner's testimony is contradicted by his own witness, Mrs. Williamson, the reporter, who said (E. 152): "I did not use that word. This is a good example of what happens on Tuesday night when the other members of the Editorial Board will read through an article." Mr. Skolnik was a member of the Editorial Board (A-2).

Another example of petitioners' deliberate falsity with intent to harm is the paragraph in the News Review article of June 9, 1966, which states (E. 223):

> "Reportedly, a number of home-owners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards."

Petitioners cannot claim that they were merely reporting a public meeting, as this was neither a public meeting nor a report of what was said there. In fact, the chairman said they wouldn't discuss the matter (E. 53-54), so the reporter, Mrs. Skolnik, spoke to the complainants after the meeting. Mr. Skolnik justified the use of the phrase "started legal proceedings against Bresler" in the following colloquy (E. 54):

> "What do you know about suits which were filed?
> A. About suits?
> Q. Yes. A. No, I don't know anything about suits. All I know is that people were complaining about the fact that they were having troubles—
> Q. But that isn't what your article said. Your article doesn't say a word about complaints. It says legal proceedings. A. Well, that covers complaints."

Petitioners contend that their failure to verify the undisputed testimony of respondent that no such legal proceedings had been filed against him (E. 94) constituted mere negligence. However, what was more important was that petitioners had deliberately falsified what the home-owners

had said. No one said he had "started legal proceedings against Bresler". That was the newspaper's own statement. And, the Maryland Court of Appeals properly held that this false charge was calculated to result in serious injury to Bresler's reputation as a builder and developer (A. 38).

Of collateral interest is the fact that petitioner Skolnik tried to evade responsibility by admitting that he and his wife were the joint authors of the foregoing article, but that his wife wrote the libelous paragraph (E. 53).

4. Instructions to the Jury

Petitioners complain of a single, allegedly erroneous, instruction to the jury—that which referred to "actual malice" as a "state of mind . . . best described as spite, hostility, or deliberate intention to harm".

As the Maryland Court of Appeals said (A. 41):

> "It is well settled in Maryland that in considering alleged errors in a charge of the trial court to the jury, we will consider the charge as a whole and will not select, out of the context of the whole charge, individual statements which might, of themselves and out of context, contain inartificial methods of expression or appear to be misleading."

In *Curtis Publishing Co. v. Butts*, 388 U.S. at 156-157, the Court said:

> "The impact of a jury instruction 'is not to be ascertained by merely considering isolated statements, but by taking into view all the instructions given and the tendencies of the proof in the case to which they could possibly be applied.' *Seaboard Air Line R. v. Padgett*, 236 U.S. 668, 672, 35 S. Ct. 481, 482, 59 L.Ed. 777."

It was also stated in *Butts* that punitive damages require a finding of "ill will" under general libel law (388 U.S. at 161).

The opinion of the Maryland Court of Appeals in this case contains a comprehensive discussion of the trial court's instructions to the jury, as well as relevant portions of the opinions in *New York Times, Butts, Time,*

Inc. v. Hill, and references to *Rosenblatt v. Baer* and *Beckley Newspapers Corp. v. Hanks.* It is apparent from the trial court's instructions and the appellate court's opinion that both courts below had carefully considered and applied the federal rule pertaining to public officials announced in *New York Times* and reiterated in the subsequent cases, and as it was later applied to public figures in *Butts* and *Walker.*

The appellant court below commented on the trial court's instructions that: "Indeed in several instances the test was broader than that of *New York Times* as it was not always limited to a 'public official' or a 'public figure'." The appellate court further stated (A. 54):

> "In our opinion, the appellants suffered no prejudice from the instruction, considered as a whole, in this regard. If there was any prejudice, it was suffered by the plaintiff, not by the defendants."

To illustrate how far the trial court bent in its efforts to instruct the jury in language consistent with *New York Times* and the subsequent libel cases (and to satisfy petitioners' objections based on their "blind application of *New York Times Co. v. Sullivan*"), the trial court repeated the actual malice instruction as follows:

> E. 191–"And such statements repeated and/or published, unless with actual malice, or knowledge that they are false, reckless disregard for whether they are true or false, is not libel."
>
> E. 191-192–"The law recognizes the importance of free discussion and criticism and matter of public interest to the extent that it grants immunity even with respect to publication of foolish and prejudicial criticism if they are not published with malice, knowledge of their not being true, it is knowledge they are false, or reckless disregard of whether they are true or false."
>
> E. 192–"If you find that the publication complained of relates to a matter of interest to one or both of the parties to the publication or communi-

cation and that the means of publication was reasonably adapted to the protection of that interest, you are instructed that the publication is qualifiedly privileged and *your verdict should be for the defendant unless* you find that the publication was made with actual malice, knowledge of its falsity, or reckless disregard of whether it was true or false." (Emphasis supplied)

E. 192–"You are instructed the publication is qualified privileged and *your verdict should be for the defendant unless* you find again the publication was with actual malice, knowledge of its being false or reckless disregard of whether it was true or false." (Emphasis supplied).

E. 193–"Further, although honest indignation and strong words are not evidence of express malice, or actual malice, actual malice may also be present in the eyes of the law if you determine by a preponderance of the evidence that the defendant's conduct, published in the article complained of constituted malice, reckless disregard of whether they are true or false."

E. 197–"With the law that I have given you you are obligated to find malice, knowledge of the falsity, reckless disregard of what is true or false in order to find (for) the plaintiff."

E. 204–"The Court will give you one additional instruction as a matter of law, that in a suit for libel you have a treating differently of different people. A public official or a public figure, the law permits under the question of privilege or fair comment a wider latitude. In other words, in matters that are of general public interest, the articles complained of were, if you find by a preponderance of the evidence was public activities, there is a constitutional protection for publication of matters regarding a public official or a public figure. There is no denial in this case Mr. Bresler was not a member of House of Delegates and a candidate for Controller of the State of Maryland when the last article was published.

> And *the plaintiff cannot recover unless* you find, as I say again, by a preponderance of the evidence, that the articles were published with actual malice, knowledge of their being false or reckless disregard of whether they were true or not." (Emphasis supplied).

Following the above instruction, the trial court gave an additional clarifying instruction:

> E. 205—"Very well, the Court would add one thing. In reference to the last instruction I gave you, with reference to his official conduct *or* words as a public official or public figure."

Counsel for petitioners then engaged in a discussion with the trial court. Although he contends that respondent is both a public official and a public figure (petitioners' brief p. 13; E. 206), he said (E. 205); "I think the jury is going to be confused there, a public figure is not a public official. So how could you have official conduct that Your Honor has instructed to public official.", and further he said (E. 206): "I think they will confuse the jury because public figures are not officials and therefore do not have official conduct."

After lunch, and following a further colloquy between counsel for petitioners and the trial court, the trial court gave the following additional instruction:

> E. 209—"Very well, Mr. Foreman and gentlemen of the jury: The Court added to my original instruction regarding public officials, will include public figures, because in the manner which it was done I am of the opinion there may be some misconception of exactly what I meant with the original instructions as to public officials and public figures.
>
> I am going to give you the additional instruction, which is the law on this subject. There is no contention here that the statements regarding blackmail were true. The Constitutional guarantee requires a rule that prohibits a public official or public figure from recovering damages for defamatory falsehood

relating to his official conduct unless he proves that the statements were made with actual malice, that is with knowledge that it was false or with reckless disregard of whether it was false or not. *The same thing is said in the same vein, definition of malice is constitutionally insufficient where discussion of public affairs is concerned unless the plaintiff establishes that the utterances were false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true.*" (Emphasis supplied).

The final instruction was much broader than *New York Times* in its application to "discussion of public affairs", without any qualification or limitation. It could hardly have failed to impress the jury as the trial court's last words on the subject.

Petitioners also complain of a single refusal by the trial court to give the jury an additional instruction pertaining to petitioners' failure to verify the "started legal proceedings" article. The trial court did instruct the jury that petitioners had the right to rely "upon people which it knows or has very good grounds to believe are responsible citizens" (E. 191) and to consider "whether the publication was based on information received from persons whom the defendant believed to be reliable persons" (E. 196.) These two instructions, together with the frequently repeated instructions on knowledge of falsity or reckless disregard of the truth, should have been sufficient on the question—particularly since no one said he had "started legal proceedings against Bresler."

5. Relevancy.

Petitioners apparently contend that all published repetitions of any statements made during public debate are constitutionally protected by the federal rule, without regard to the relevancy of the statements. That is not what the Court said in *Curtis Publishing Co. v. Butts*, when it quoted *Time, Inc. v. Hill*, to the effect that ". . . freedom of dis-

cussion 'must embrace all *issues* about which information is *needed or appropriate*. . . '" (388 U.S. at 147, 87 S.Ct. at 1987) (Emphasis supplied). Former Chief Justice Warren also mentioned in that case (388 U.S. at 163) the right of the press and public to be informed on matters of *legitimate* interest, which would not appear to include false and irrelevant charges of blackmail.

Prosser, The Law of Torts, 2nd Edition, likewise said:

> "There is no privilege attached to . . . headlines which do not fairly reflect the gist of the text. . ." (Sec. 95, p. 625).
>
> "Thus qualified privilege does not extend, in any of the above cases, to the publication of irrelevant defamatory matter with no bearing upon the public or private interest which is entitled to protection:" (Sec. 95, p. 625).
>
> "It must rather be directed and confined to the facts which are a matter of public concern, and not go beyond them, as by attacking the personal character of the author of a book," (Sec. 95, p. 623).

In *Dorr v. United States,* 195 U.S. 138, 152, 153, the Court held that headlines are not privileged even though they head a privileged report of a judicial proceeding. As the Court said: "The report must also be strictly confined to the actual proceedings in court, and must contain no defamatory observations or comments from any quarter whatsoever, in addition to what forms strictly and properly the legal proceedings." And as it said further: "And all sensational headings to reports should be avoided. . .These headlines were not privileged matter at the common law, and were libelous remarks or comments if the matter could be deemed otherwise privileged. . . . "

Petitioner Skolnik knew "blackmail" was a crime (E. 32). Petitioners' witness, Mayor Smith, testified that there was nothing discussed at either of the two meetings which justified the use of the word "blackmail" by anyone from the

audience (E. 132). Petitioners' witness, Mrs. Williamson, testified that there was no relation between Mr. Bresler's offer and the crime of blackmail (E. 155). Petitioners' witness, Mrs. Skolnik, testified that blackmail "could be a crime" and admitted that Mr. Bresler was not involved in the crime of blackmail as a result of what he was proposing to the City Council or Board of Education (E. 184-5). Nevertheless, respondents headlined, published, and re-published the blackmail accusation.

6. Ill Will

This case is somewhat unusual in that the New Review also published two articles which solicited funds for the filing of a suit against respondent. These articles falsely represented that the funds were to be used for a suit in equity for an injunction, when in fact they were used to finance the filing of a suit at law against the respondent and others, primarily for substantial damages and only incidentally for an injunction. As the Court of Appeals noted (A. 17), four of the plaintiffs withdrew before and during trial, and the trial court granted a motion for a directed verdict against the remaining plaintiffs. Ironically, the two reporters who wrote the "blackmail" articles testified that they had contributed to the legal fund, but neither Mrs. Williamson (E. 153) nor Mrs. Sucher (E. 167) knew the fund was to be used to try to collect damages in excess of $1,000,000. from the respondent and others. As a further irony, Mrs. Bergemann (who made the "blackmail" accusation in Mrs. Sucher's article) was the one who solicited Mrs. Sucher's dollar.

Petitioner Skolnik said that Mayor Smith had suggested the filing of suit (E. 67), but Mayor Smith said the suit wasn't discussed at any meeting he attended (E. 127).

When asked if he and his wife had assisted in any way in the collection of the legal funds, Petitioner Skolnik answered, "I don't recall any activity in that respect" (E. 62). When he was asked about the last paragraph of the article which

solicited assistance for the collection of these funds and listed three telephone numbers to call, he said: "The latter number is my wife's number" (E. 62). When asked further: "You don't have separate telephones", he said: "That is right" (E. 63). When queried about the second article which solicited assistance for collection and listed two telephone numbers, he answered: "One of the numbers is my wife's number" (E. 69).

Petitioner Skolnik admitted that it is not the duty or responsibility of a newspaper to solicit funds for the institution of suits (E. 63), and that he knew of no similar suits being supported by the legal fund (E. 80).

In *Curtis Publishing Co. v. Butts*, 388 U.S. at 161, 87 S. Ct. at 1994, the Court said:

> "Where a publisher's departure from standards of press responsibility is severe enough to strip from him the constitutional protection our decision acknowledges, we think it entirely proper for the State to act not only for the protection of the individual injured but to safeguard all those similarly situated against like abuse. Moreover, punitive damages require a finding of 'ill will' under general libel law and it is not unjust that a publisher be forced to pay for the 'venting of his spleen' in a manner which does not meet even the minimum standards required for constitutional protection."

Petitioners' brief (p. 18) alleges that one of the lower court's "glaring departures from the holdings of this Court as to the meaning and substance of the *New York Times* rule" was "The lower court's . . . obvious adherence to the pre-*New York Times* standard of actual malice as consisting of 'hostility' or 'ill will' . . ." . Although petitioners contend that respondent is a public figure, they apparently reject the holdings of this Court in the post-*New York Times* case of *Curtis Publishing Co. v. Butts*, which dealt with a "public figure" rather than a "public official", particularly in its reference to "ill will" cited above.

7. Reasons for denying the writ.

Apart from the fact that the trial of this case took five days, a reading of the trial court's instructions to the jury shows that it tried to apply the holdings of all the libel cases decided by this Court; particularly *New York Times* and *Butts*. It instructed the jury in accordance with the strict edict of *New York Times*, even though it disagreed with petitioners and agreed with the majority opinion of Mr. Justice Harlan in *Butts* that "the rigorous federal requirements of *New York Times* are not the only appropriate accommodation of the conflicting interests at stake." (388 U.S. at 155, 87 S.Ct. at 1991).

It is noteworthy that Chief Justice Warren, although he advocated strict adherence to the *New York Times* standard in his concurring opinion in *Butts*, joined in the dissenting opinion in *Time, Inc. v. Hill*, which said (385 U.S. 418 and 420, 87 S.Ct. 557 and 558): "But a jury instruction is not abracadabra. It is not a magical incantation, the slightest deviation from which will break the spell . . . The English language is not so esoteric as to permit serious consequences to turn upon a supposed difference between the instructions to the jury and this Court's formulation."

If it is petitioners' contention that the judgment below should be reversed because, seven of the eight times the trial court gave the *New York Times* instruction, it omitted the magical words "that is" after the word "malice", the Court likewise omitted those words when it stated the federal rule in *Time, Inc. v. Hill* (385 U.S. at 387, 87 S. Ct. at 541).

The verdict of the twelve-man jury was obviously unanimous. The decision of the Court of Appeals of Maryland was unanimous. Petitioners show no justification for asking for the reversal of the judgment of both courts in their petition.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ABRAHAM CHASANOW

151 Centerway
Greenbelt, Maryland 20770

Attorney for Respondent

FILE COPY

Office-Supreme Court, U.S.
FILED
SEP 8 1969
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners

v.

CHARLES S. BRESLER,

Respondent

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

ROGER A. CLARK
1730 K Street, N.W.
Washington, D.C. 20006
Attorney for Petitioners

Washington, D. C. · THIEL PRESS · 202 · 393-0625

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners

v.

CHARLES S. BRESLER,

Respondent

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Bresler again acknowledges that he is a public figure in Greenbelt. He seeks to avoid the constitutional effect of that status, however, by suggesting, for the first time here, that it was publicity given him in the News Review that made him a public figure (p. 3). This argument ignores not only the wide publicity previously given his activities in Greenbelt by The Washington Post (E. 242-4), but also, more importantly, the fact that Bresler clearly made himself a public figure in Greenbelt by his repeated and often controversial requests for support from the city council

and other public bodies for his major land development plans. As shown in the petition (p. 4, ftn. 1), these activities of Bresler clearly bring him within the criteria with respect to public figures set forth in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 146, 162 (1967).

The equal importance of protecting uninhibited debate with respect to public issues involving "public figures" as well as "public officials" was underscored by Chief Justice Warren in *Butts* as follows:

> Our citizenry has a legitimate and substantial interest in the conduct of such persons, and freedom of the press to engage in uninhibited debate about their involvement in public issues and events is as crucial as it is in the case of "public officials." The fact that they are not amenable to the restraints of the political process only underscores the legitimate and substantial nature of the interest, since it means that public opinion may be the only instrument by which society can attempt to influence their conduct. 388 U.S. at 164

The citizenry of Greenbelt clearly had a "legitimate and substantial interest" in Bresler's pivotal involvement in the public issue raised by his controversial zoning proposal to the city council which directly affected how a substantial portion of their community was to be developed. Moreover, they were entitled to a full report of the debate on that proposal including the fact that many interested persons at the city council meetings expressed strong opinions that the proposal was an attempt to "blackmail" the city. These strong expressions not only directly related to the proposal, but their inclusion in the report was necessary to accurately convey the tone and tenor of the debate.

Thus, it is clear that the articles in issue are within the constitutional protection of the *New York Times* rule as extended in *Butts* to suits brought by public figures.[1]

---

[1] Bresler's claims (pp. 3-4) that petitioners failed to raise a separate public figure defense or to request a proper instruction thereon are

II

Bresler attempts to gloss over the fact that seven out of eight instructions "omitted the magical words 'that is' after the word 'malice'" (p. 15). As clearly shown in its colloquy with counsel (Petition, p. 12), however, the trial court intentionally omitted these "magical words" in order to convey to the jury its view of the law that actual malice, as he had previously defined it to mean "ill will," was separate and distinct from knowing falsity or reckless disregard of the truth. The cumulative impact of these and the other clearly erroneous instructions on actual malice was hardly cured by the isolated, perfunctory and confusing instruction which the court finally gave on the *New York Times* rule.

III

Bresler's last argument demonstrates the wisdom of excluding the general concept of "ill will" from the definition of actual malice under the *New York Times* rule. Bresler's argument is that the News Review should be punished for the articles in which the word "blackmail" appeared because *eight months* later it published two articles which publicized a fund drive in the community, the proceeds from which were used to support a citizens' suit challenging his disregard of land covenants which he gave to the City in connection with another matter (p. 13).[2]

---

equally without merit. Petitioners' constitutional defense clearly referred to Bresler's status both as a public official and as "an active participant in matters of pressing public concern to which the publications concerned were directed." (E. 6) On the basis of this defense, petitioners requested instructions that the articles were actionable only upon a showing of knowing falsity or recklessness under the *New York Times* standard. (E. 8-9) After these requests were rejected, petitioners repeatedly attempted to get a correct statement of the public figure aspect of the constitutional protection. (E. 206, 208)

[2]Bresler's statement that the News Review falsely represented that the funds were to be used for a suit in equity for an injunction when

Bresler's reliance in this regard upon Justice Harlan's opinion in *Butts* (p. 14) is completely misplaced. Justice Harlan argued for a constitutional standard that would permit a public figure to recover damages for a defamatory falsehood upon a showing of "highly unreasonable conduct constituting an extreme departure from standards of investigation and reporting ordinarily adhered to by responsible publishers." 388 U.S. at 155. This test, like the *New York Times* test adopted by the majority, was intended to be applied to the defendant's conduct in publishing the articles claimed to be libelous. It clearly was not intended to permit recovery premised on a general finding of "ill will" based on such far removed and unrelated conduct of the defendant.

Bresler cannot argue that the articles in issue represent an "extreme departure" from responsible reporting standards. For, as shown in Appendix C to the petition, leading newspapers throughout the country do not hesitate to report the use of, or to use themselves, strong terms like "blackmail" in a noncriminal colloquial sense to criticize exertions of pressure in connection with public issues. Such is the essence of spirited public debate. Where, as here, such expressions of opinion are accompanied by a clear and accurate statement of the conduct being criticized, they are fully entitled to constitutional protection.

Thus, it is immaterial for purposes of this case which standard of constitutional protection is applied—that argued

---

in fact they were used to finance a suit in law (p. 13) fails to point out that the articles appeared well *before* the suit was filed and that there was no evidence that any one on the News Review knew of the nature of the suit before it was filed (E. 67, 68-9, 230). This is only one of a number of irrelevant and misleading statements in his brief which seek to divert attention from the complete absence of any rational basis for the lower court's central finding that the articles in issue charge Bresler with the crime of blackmail.

for by Justice Harlan or the *New York Times* rule adopted by the majority in *Butts*. Both command a reversal.

Respectfully submitted,

ROGER A. CLARK
1730 K Street, N.W.
Washington, D.C. 20006
Attorney for Petitioners

INDEX

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT	4
The Publications	4
The Covenants Controversy	11
Instructions on Actual Malice	14
SUMMARY OF ARGUMENT	17
ARGUMENT – Introduction	19
I. Knowing Falsity or Recklessness Cannot Be Established by Extracting a Word Out of Context and Ascribing to It a Meaning Wholly Foreign to the Article in Which It Appears	21
II. Clear Expressions of Opinion Regarding an Accurately Described Public Proposal Should Not Be Actionable	25
III. Failure to Verify Information Obtained from a Number of Apparently Reliable Sources Does Not Constitute Reckless Disregard of the Truth	28
IV. This Court Should Hold That There Is Insufficient Evidence as a Matter of Law To Permit Recovery Under The *New York Times* Rule	31
V. The Trial Court Erred in Its Instructions:	
(A) By repeatedly instructing that recovery could be based upon "actual malice" which was defined as "spite, hostility or deliberate intention to harm" that could be inferred from the publications themselves	34
(B) By refusing to instruct on the meaning of reckless disregard of the truth	37
CONCLUSION	37
APPENDIX A – Excerpts from Newspaper Articles	A-1

CITATIONS

CASES:

Afro-American Publishing Co. v. Jaffee, 366 F.2d 649 (D.C. Cir. 1966) 22n

Associated Press v. Walker, 388 U.S. 130 (1967), *sub nom. Curtis Publishing Co. v. Butts* 20n

Beckley Newspapers Corp. v. Hanks, 389 U.S. 81 (1967) . . . 25, 28, 32, 33, 35

Bennett v. Seimiller, 175 Kan. 764, 267 P.2d 926 (1954) 23

Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967) 19, 25, 30n, 32

Flanagan v. Nicholson Publishing Co., 137 La. 588, 68 So. 964 (1915) 23

Garrison v. Louisiana, 379 U.S. 64 (1964) 25, 28, 30-31, 33, 37

Henry v. Collins, 380 U.S. 356 (1965) 25, 35

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 2, 15n, 17-18, 20, 24, 25, 28, 31, 32, 34

Parker v. Kirkland, 298 Ill. App. 340, 18 N.E.2d 709 (1939) . . . 23

Pauling v. Globe-Democrat Publishing Co., 362 F.2d 188 (8th Cir. 1966), *cert. denied*, 388 U.S. 909 (1967) 33-34

Pickering v. Board of Education, 391 U.S. 563 (1968) 32

Pulvermann v. A. S. Abell Co., 131 F.Supp. 617 (D. Maryland 1955), *aff'd*, 228 F.2d 797 (4th Cir. 1956) 27-28

Rosenblatt v. Baer, 383 U.S. 75 (1966) 15, 34

St. Amant v. Thompson, 390 U.S. 727 (1968) 28-29, 32

Time, Inc. v. Hill, 385 U.S. 374 (1967) 24n, 36

Time, Inc. v. McLaney, 406 F.2d 565 (5th Cir. 1969), *cert. denied*, 395 U.S. 922 32

CONSTITUTION AND STATUTES:

United States Constitution, First Amendment 3

United States Constitution, Fourteenth Amendment, § 1 3

28 U.S.C., Section 1257(3) 2

MISCELLANEOUS AUTHORITIES:

American Jurisprudence, *Libel and Slander*, Vol. 33, § 87 23
Prosser, *The Law of Torts*, 3rd Ed., 1964, p. 814 ..... 27n
Restatement of Torts, 1938, § 606, Comment *b* 27n

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners

v.

CHARLES S. BRESLER,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR PETITIONERS

OPINION BELOW

The trial court (Circuit Court of Prince George's County) did not write an opinion. Its instructions to the jury are printed in full in the Appendix at E. 188, and its entry of judgment is printed at E. 15. The opinion of the Court of Appeals of the State of Maryland, printed at E. 265, is reported in 253 Md. 324, 252 A.2d 755.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on May 2, 1969 (E. 265). In the trial court, petitioners objected on First Amendment grounds to the sufficiency of the evidence as a matter of law in motions for a directed verdict and for judgment N.O.V. (E. 9-15, 116-9, 186-7) and to the instructions complained of in this Court (E. 8-9, 199-210). These objections were renewed in the Court of Appeals and are discussed in its opinion at E. 300-4 and E. 313-9, respectively. The petition for writ of certiorari was filed on July 31, 1969 and was granted on October 20, 1969, ____ U.S. ____. The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

The questions presented all relate to the meaning and application of the rule of constitutional protection, first announced in *New York Times Co. v. Sullivan,* 376 U.S. 254 (1964), that prohibits a public official or a public figure from recovering damages for a defamatory falsehood relating to his official or public conduct unless he proves that the statement was made "with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 279-80.

1. Whether knowing falsity or reckless disregard of the truth under the *New York Times* rule can be established by extracting a word out of context and ascribing to it a meaning wholly foreign to the article in which it appears.

2. Whether, under the *New York Times* rule, a libel judgment can be predicated on an expression of opinion regarding a public proposal requesting governmental action where the proposal to which the opinion clearly referred is accurately described in the article in issue.

3. Whether the failure to further verify information obtained from a number of apparently reliable sources con-

stitutes sufficient evidence of reckless disregard of the truth under the *New York Times* standard.

4. Whether there is sufficient evidence as a matter of law to establish knowing falsity or reckless disregard of the truth.

5. Whether, in a libel case to which the *New York Times* rule applies, the trial court erred:

(a) By instructing the jury that "actual malice" which would permit recovery consists of "a state of mind . . . best described as spite, hostility or deliberate intention to harm" that could be inferred from the language of the publications in issue; and

(b) By refusing to instruct that "[r]eckless disregard of the truth is more than mere negligence on the part of the newspaper . . . [p]laintiff must show by a preponderance of the evidence that the defendants published defamatory false statements with a high degree of awareness of their probable falsity."

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Constitution, Amendment XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

This action for alleged libel stems from a heated controversy over zoning and land development in the City of Greenbelt, Maryland. Petitioners are publishers of the Greenbelt News Review, a weekly newspaper staffed on a part-time basis by interested residents. Respondent Bresler is a major builder-developer in Greenbelt who had had numerous dealings with the Greenbelt City Council seeking approval for higher density zoning for various tracts of land. During the period involved, Bresler was also a member of the Maryland House of Delegates and later a candidate for Comptroller of the State.

The declaration challenged several articles in the News Review which contained criticism of Bresler's dealings with the City Council and with other governmental agencies regarding zoning requests and land development matters. Respondent's counsel conceded in his opening statement that Bresler was a public figure in Greenbelt and it was assumed throughout the trial that the *New York Times* rule was applicable to the articles in issue. This same assumption is accepted, albeit reluctantly, by the Court of Appeals (E. 296-7).[1]

The Publications

Bresler relied principally on two articles which accurately report public debate at two City Council meetings convened to consider a zoning proposal made by him to the Council. The pertinent parts of the first article, dated October 14, 1965, are as follows:

> SCHOOL SITE STIRS UP COUNCIL
> REZONING DEAL OFFER DEBATED
>
> By Dorothy Sucher
>
> Delay in construction of a new Greenbelt high school is the lever by which a local developer is pressuring the city to endorse his bid for higher

[1] This assumption is clearly correct for the reasons stated *infra*, pp. 19-20.

density rezoning of two large tracts of land; so citizens heard at a well-attended special meeting of the City Council on Monday night, Oct. 11.

For the past nine months, the Board of Education has been trying to acquire land owned by Consolidated Syndicates, Inc. (Charles Bresler-Theodore Lerner), for a high school site.

* * *

Some time ago, it became known that the developer would agree on the price, provided the city would help him obtain higher density rezoning for two of his tracts (Parcels 1 and 2, totaling 230 acres) near the center of Greenbelt. If the city refused, he threatened to delay the school site acquisition as long as possible through the courts.

* * *

Blackmail

"It seems that this is a slight case of blackmail," commented Mrs. Marjorie Bergemann on Monday night, and the word was echoed by many speakers from the audience.

Councilman David Champion, however, denied that it was "blackmail," explaining that he would rather "refer to it (i.e., the negotiations–Ed.) as a two-way street."

Speaking from the floor, Gerald Gough, commented: "Everyone knows there's a need for a school–just walk through the halls of High Point. The developer knows there's a need and says, 'we'll meet your need if you meet our need.' In my opinion, it's highly unethical."

* * *

Among the parents who spoke was Mrs. Joseph Rosetti, who said: "I have several children going into high school, but I would rather adhere to the Greenbelt Master Plan than overcrowd the town with dense development. I would stand for my children's discomfort, rather than give in to a blackmailing scheme." (Pl. Ex. 1, E. 211-2, Tr. 39)

The pertinent parts of the second article, dated October 21, 1965, are as follows:

COUNCIL REJECTS BY 4-1
HIGH SCHOOL SITE DEAL

By Mary Lou Williamson

More than 150 citizens came to hear how the new City Council would respond to pressure by a local developer for a higher density zoning on a large tract of land in exchange for uncontested consummation of the sale of a Greenbelt senior high school site to the Board of Education at the Council meeting Monday night.

Council sat quietly listening for more than an hour to citizen statements before voting to reject the proposal (4-1) with Councilman Dave Champion dissenting.

* * *

A procession of citizens took the floor to make impassioned speeches—some from prepared texts, some extemporaneously. The mayor occasionally had to caution them to refrain from engaging in personalities.

Albert Herling suggested skulduggery in the September court postponement. Although he praised most of the City Manager's report, he criticized the section entitled "Risks and Conclusions," saying they appeared negative in the extreme. He suggested a list of positive steps that council ought to take: 1) fight Bresler's "blackmail"; 2) make clear to the Board of Education—no deals; 3) make clear to the District Council (zoning authority) unanimous opposition to the requested R-30 zoning; and 4) seek the swiftest possible court settlement.

* * *

Pilski asked if anyone in the audience cared to speak in support of Bresler's proposal.

Only James Martin took the floor. He suggested that Bresler's action was not "blackmail" but the

> legitimate advance of his rights to develop his land. Martin suggested, by the way of example, that GHI's long-range planning committee had been doing much the same thing some months ago. He alleged that the density of the "frame homes (GHI) is far more atrocious than anything Bresler's considering." (Pl. Ex. 2, E. 216-9, Tr. 39)

The opinion of the Court of Appeals rests squarely on the incredible proposition that these articles charge Bresler with the crime of blackmail.[2] Thus, the court's central and critical finding is that "[t]he charging of Mr. Bresler with having committed blackmail could be found by the jury (as it was) that he was charged with the commission of a crime." (E. 291)[3]

With this interpretation of the articles as its premise, the court further finds "convincing evidence" sufficient to overcome the constitutional protection of the *New York Times* rule based solely on the following "admissions" by petitioners' witnesses:

1. the word blackmail taken out of context could charge the commission of a crime, and
2. there was no evidence uncovered at the public meeting that Bresler committed the crime of blackmail (E. 298, 300-2).

---

[2]The court also stated that the second article was not accurate because the word "skulduggery" was not a direct quote of any speaker at the meeting. The uncontradicted testimony, however, is that it was a fair and accurate condensation of Mr. Herling's remarks concerning official action taken by the School Board in postponing its condemnation action against respondent (E. 42-3, 152-3, 162-3).

[3]It is highly improbable that the jury in fact made such a finding since the trial court defined blackmail in its instruction as "the extortion of money by threats or overtures toward criminal prosecution or the destruction of a man's reputation or social standing." (E. 196) The jury is much more likely to have concluded from the clearly erroneous instructions on actual malice, see *infra*, pp. 34-6, that the term blackmail was an "excessive" or "intemperate" opinion published with "hostility" toward respondent.

Thus, the court concludes, on the basis of this testimony alone that: "It would be difficult to conceive of a case in which there was more 'convincing evidence'—the admissions of one of the appellants and of several of their witnesses—that the appellants did indeed have actual knowledge of the falsity of the charge or, in any event, entertained 'serious doubts as to its truth.'" (E. 301-2)[4]

Needless to say, Bresler was unable to identify a single person who understood the articles as charging him with the crime of blackmail nor was he able to explain how he himself arrived at that interpretation (E. 114-6). Bresler did not even complain to the News Review regarding the articles until he filed this action some nine months later when he was in the midst of his campaign for State Comptroller and the News Review had begun to accurately criti-

---

[4]The testimony clearly establishes that the term "blackmail" was understood at the meetings and by the News Review staff not in the criminal sense but in the colloquial sense to mean that Bresler was attempting to coerce the City into accepting his zoning proposal by threatening to hinder the City in obtaining the school site which it desired. Thus, Mr. Skolnik who, along with the other members of the editorial board, reviewed the articles prior to their publication testified:

> We never—all I can say again is that we were viewing this as a description, a colorful description, what was going on at that time. We never looked at it as a description of criminal blackmail. (E. 33)
>
> * * *
>
> I think that the word was used to indicate a situation where the developer was using two pieces of ground as a lever to get a higher density to [sic] one piece of land in exchange for something the city needed. (E. 34)

Mrs. Sucher, the reporter who wrote the first article, testified why she did not interpret the article as charging the crime of blackmail:

> Well, the crime of blackmail—my knowledge of the crime of blackmail, I am afraid is really from mystery stories, but I think of this being extorted money by threatening to tell something you know and there was nothing like that. I mean they couldn't have meant that. (E. 165)

cize his disregard of land covenants given to the City with respect to another tract.[5]

Bresler also complained of an article dated June 9, 1966, entitled "Charles Bresler To Run For State Comptroller" which reviewed the status of his land dealings in the community (Pl. Ex. 6, E. 222-3, Tr. 40). Bresler claimed the following statement was not only false but was published recklessly:

> Reportedly, a number of homeowners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make construction corrections in accordance with county standards.

The reporter, Mrs. Skolnik, was told by 15-20 homeowners who attempted to air their grievances at a public meeting that they had gone to their lawyers to start action and had filed complaints with county authorities regarding construction defects in their homes, which Mrs. Skolnik understood as starting legal proceedings. Many of the homeowners were either personally known to her or were recognized by her as responsible residents in the community. Moreover, she had previously heard similar statements from other homeowners in the respective developments. The homeowners identified Bresler as the builder against whom they were complaining (E. 172-7).

Although Bresler conceded that a number of homeowners had complained to him (E. 112), he maintained the article was false because no suits had been filed against him personally. At least one suit had been filed, and three others were subsequently filed, against the respective development corporations in which Bresler was a principal (E. 19). Bresler's claim that he was no longer active in the corporations was flatly contradicted by his own contemporaneous affidavit in an unrelated action in which he described himself as then being the Vice President in charge

---

[5] See *infra*, pp. 11-13.

of sales for one of the corporations (E. 112-4; Def. Ex. 36, E. 260-1, Tr. 730).[6]

Although the trial court paid little attention to the article,[7] the Court of Appeals concluded that the jury might well have found that the "failure by Mrs. Skolnik to verify either in the court records or by a simple telephone call to Bresler the truth of the serious charge of the institution of the suits, amounted to recklessness sufficient for a finding of actual malice." (E. 303) At the same time, the Court of Appeals approved the trial court's refusal to give the following instruction requested by petitioners:

> Reckless disregard of the truth is more than mere negligence on the part of the newspaper. The plaintiff must show by a preponderance of the evidence that the defendants published defamatory false statements with a high degree of awareness of their probable falsity. (E. 8-9)

The Court of Appeals held that "the trial court was under no obligation to give a further definition of the phrase 'reckless disregard of the truth' as the phrase is sufficiently definite in itself and sufficiently presented the issue to the jury". (E. 319)

The other articles in issue were given little attention at the trial,[8] and there was no evidence that the statements complained of were factually incorrect.

Substantially all of Bresler's remaining evidence was devoted to showing that petitioners and some of the persons quoted in the articles in issue were hostile to him

---

[6]Bresler didn't know whether he told the complaining homeowners, with whom he continued to deal, that he was no longer active (E. 112-3).

[7]In denying petitioners' motion for a directed verdict, the trial court stated: "The allegations in the articles on the Controller [don't] bother me too much." (E. 186)

[8]For example, the letter to the editor describing Bresler's zoning proposal as "An Unethical Trade," referred to by the Court of Appeals at E. 271-2, 294, 303, was not even mentioned at the trial.

because they had strongly opposed his land development activities on other occasions. The Court of Appeals concluded from this evidence—primarily as it related to the covenants controversy described below—that "there were sufficient facts to indicate to the jury, an affirmative hostility, a personal animus, against Bresler and a desire on the part of the publishers of the News Review to injure his reputation and standing in the Greenbelt area through the use of the false charges." (E. 303-4)

The Covenants Controversy

In 1962 Bresler executed land covenants limiting his development of a 50-acre tract in the center of town to an average density of 7 units per acre in exchange for the City's support for his zoning requests. Shortly thereafter, however, he began building at one end of the tract at a much higher density per acre. Then, in June 1964, without notifying the city, he filed in the land records a document purporting to nullify the covenants on the grounds that they had not been consented to by the holder of a deed of trust which he allowed to be placed on the property two weeks before the covenants were signed (E. 16-17).

Bresler nevertheless continued to create the impression that he considered that the covenants were still binding and that he would limit his further development of the 50 acres to an average density of 7 units per acre or a total of 350 units as promised. Thus, in May 1965, he appeared before the City Council to deny reports that he planned an additional 490 units when in fact a detailed plat seeking approval for the additional units had already been filed with the area planning agency (E. 105-6; Def. Ex. 6, E. 245, Tr. 730). Moreover, in answering questions by Councilman Bernstein he affirmatively misrepresented that he still considered the covenants to be binding as follows:

Bernstein: "How many units do you have planned at the moment?"

Bresler: "I have another 178 units that are being planned right now."

Bernstein: "That's a total of how many?"

Bresler: ". . . 298 units."

Bernstein: "What is the covenants that you put on there in so far as units . . ."

Bresler: "I'm well within it."
(Someone spoke up and said 350 units.)

Bernstein: "Our concern is when you talk of planning or you don't talk of it, you infer that there may be more than 350 units planned there."

Bresler: "If there ever are, you gentlemen will have to approve it first."[9] (E. 17-18)

Bresler also did not mention that the 178 units he admitted he was planning were to be in a single eight-story apartment house which violated not only the density but the building height restrictions of the covenants (E. 16-7, 106-7).

Bresler's purported release of the covenants did not come to light until after the City filed suit in March 1966 to enjoin construction of the apartment house (E. 137-8; Pl. Ex. 4, E. 221, Tr. 40). The suit was unsuccessful because the City was held to have waived its rights by failure to file suit on time, and Bresler ultimately developed half the 50-acre tract at twice the density limit in the covenants and sold the rest (E. 17).

In an article in issue dated April 7, 1966 the News Review published a critical but factually accurate account of Bresler's activities with respect to the covenants under the heading "Bresler Repudiates Covenants Signed With City In 1962." (Pl. Ex. 4, E. 221, Tr. 40). Other News Review articles regarding the breach of covenants (Pl. Ex. 6, E. 222-23, Tr.40; Pl. Ex. 11, E. 228-30, Tr. 173 [two articles]: Def.

---

[9]The covenants were the only basis upon which City approval would be required (E. 138). When asked at the trial why he didn't tell the Council at this meeting that he had formally declared the covenants null and void eleven months earlier, Bresler replied, "I don't know that they asked me." (E. 105)

Ex. 33, E. 257, Tr. 730) were followed by a critical editorial on July 7, 1966.[10]

The Court of Appeals finds that these "attacks" on Bresler's disregard of the covenants show actual malice *because three years earlier the News Review had not attacked* (a) an agreement by the City allowing another developer to build at a higher density in another part of town (Lakeside North) and (b) the developer's alleged violation of that agreement by constructing garden apartments rather than townhouses (E. 304).[11]

The Court of Appeals also finds actual malice was shown because two members of the News Review staff supported a community fund drive by a local civic organization to help finance an unsuccessful citizens' suit against Bresler for breach of the covenants (E. 303). The fund drive was not started, however, until June 1966 which was *eight months after* publication of the articles containing the word "blackmail" and after Bresler's misrepresentations with respect to the covenants had been revealed in the interim. Moreover, the court's further finding that the limited publicity given the fund drive in the News Review contained a "misrepresentation" that the funds were

[10]Two weeks later Bresler, who was then well into his campaign for Comptroller, brought this $2 million libel action. The editorial was originally included in the suit but was withdrawn because of Bresler's unwillingness to make discovery (E. 18).

[11]The News Review did not object to the higher density because at the time Lakeside North was on the periphery of town and "no one seem[ed] to feel this was out of line with what the City wanted." (E. 37) It was not until after his release of the covenants came to light that Bresler contended, for the first time in 1966, that the City in 1962 had breached an understanding with him to "get the same covenants from everybody" when it agreed to the higher density for Lakeside North. Councilman Bernstein flatly denied there was any such understanding with Bresler or that he had been discriminated against (E. 139-144). Finally, there was no violation of the Lakeside covenant, as assumed by the Court of Appeals, since by the terms of that covenant it was superseded by new zoning which permitted garden apartments (E. 147).

to be used "*only* to enjoin" violations of the Master Plan when, in fact, the suit against Bresler was at law for injunctive relief and damages (E. 303) is completely without substance. The two articles relied upon as containing this "misrepresentation" do not mention the form of relief to be requested (Pl. Ex. 11, E. 230, Tr. 173; E. 68-9). Moreover, both articles were published well before the citizens' suit against Bresler was filed and there was no evidence that anyone on the News Review knew of the nature of the suit before it was filed.[12]

Instructions on Actual Malice

Although petitioners requested instructions limited to the constitutional standard of actual malice (E. 8-9), the trial court repeatedly instructed the jury that Bresler could recover if he showed actual malice which it defined as follows:

> Now having given you as a basis—definition in each of these principles, the word malice—and the Court feels obligated to define that word for you—the Court would indicate that Black's Law Dictionary indicates malice as follows: the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances of the law would imply an evil intent.
>
> In addition thereto, the Court has instructed you that if you determine the defense of qualified privi-

[12]The other evidence of actual malice relied upon by the Court is equally without substance. Thus, the Court emphasizes the "close connection" between News Review staff members and the president of GHI, a large local cooperative housing association, and "the opposition of the News Review to [Bresler's request for] zoning of Parcels 1 and 2 for townhouses, but with no opposition to the construction of townhouses by GHI, itself." (E. 303-4) What the Court fails to point out is that the zoning requested for Parcels 1 and 2 would have resulted in the development of 230 acres at up to 14 units per acre constituting a major departure from the Greenbelt Master Plan whereas GHI proposed to build only 25 townhouses at a density permitted by the Plan (E. 77; Pl. Ex. 2, E. 217-8, Tr. 39).

> lege asserted by the defense applies to this case, that is fair comment privilege, the plaintiff must then prove by a preponderance of the evidence that the defendant published the article complained of with actual malice toward the plaintiff. Therefore, the Court will now again define for you another indication of what malice is. Actual malice involves the state of mind that [sic] the defendant, best described as spite, hostility or deliberate intention to harm. (E. 192-3)

The trial court further instructed that "actual malice" as so defined could be inferred "from the language or circumstances of the publication . . . if the character of the publication is so excessive, intemperate, unreasonable and abusive as to defy any other reasonable conclusion than that the defendant was moved by actual malice toward the plaintiff". (E. 194)

The Court of Appeals held that this definition of actual malice—even though given in connection with the defenses of fair comment and the right to report on a public meeting—could nevertheless properly be considered by the jury on the issue of punitive damages (E. 317).[13] The Court of Appeals further held that the impact of the instructions was later corrected by the following instruction based on incomplete excerpts from *New York Times* and *Rosenblatt v. Baer*,[14] which the trial court thought "seem to disagree" as to the proper definition of actual malice (E. 207-9):

> There is no contention here that the statements regarding blackmail were true.[15] The Constitutional

---

[13]After completing its instructions on how the defenses of fair comment and fair report could be overcome by actual malice as he had defined it, the trial court stated: "Now we move on from the principles which we talk about as libel and get to the question of damages. . . ." (E. 194)

[14]376 U.S. 254, 279-80 (1964); 383 U.S. 75, 84 (1966).

[15]This statement clearly undercuts the constitutional instruction by making it appear that petitioners conceded the falsity of the

> guarantee requires a rule that prohibits a public official or public figure from recovering damages for defamatory falsehood relating to his official conduct unless he proves that the statements were made with actual malice, that is with knowledge that it was false or with reckless disregard of whether it was false or not. The same thing is said in the same vein, definition of malice is constitutionally insufficient where discussion of public affairs is concerned unless the plaintiff establishes that the utterances were false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true. (E. 209)

The trial court specifically refused, however, to instruct that its previous references to actual malice as consisting of "spite, hostility or deliberate intention to harm" were inapplicable under the constitutional standard (E. 208, 210). Moreover, it is clear from the following colloquy with counsel that the trial court intended to instruct the jury that the articles were actionable upon a showing of actual malice as it had previously defined it:

> MR. CLARK: That statement does not make it clear to the jury that under the constitution actual malice is limited to knowledge of the [falsity] or reckless disregard of the truth.
>
> * * *
>
> THE COURT: The Court will not agree with you. . . . I don't think that was the intention. I think there were three elements in other Supreme Court cases on this particular subject, which says with actual malice or knowledge of the statement being false or a reckless disregard for whether it is true or false. And I don't think the Court intended to use those two phrases as a definition of malice. Maybe we will find out from this case which they meant . . . *I am saying actual malice is one thing,*

---

articles. The trial court previously instructed that petitioners' failure to specially plead truth as an affirmative defense was a concession that the "allegations [of blackmail] were not true". (E. 190)

knowing that the statement was false is Item 2 and a reckless disregard of whether it is true or false is Item 3. (Emphasis added) (E. 201-2)

Although Bresler admittedly suffered no pecuniary loss and offered no witnesses to show injury to his reputation, judgment was entered on a jury verdict for $5,000 compensatory and $12,500 punitive damages.

SUMMARY OF ARGUMENT

In view of the interest of Greenbelt residents in Bresler's zoning proposal which affected how a substantial portion of the community was to be developed, the News Review was clearly entitled to accurately report the public debate on that proposal at the City Council meetings, including the fact that many participants in the debate characterized the proposal as an attempt to "blackmail" the City.

The lower court completely undermined the protection afforded this report by the *New York Times* rule by extracting the word "blackmail" out of context and ascribing to it a criminal meaning which is wholly foreign to the articles in which it appears. Bresler's proposal to which the word "blackmail" clearly referred was accurately and prominently described in each of the articles in issue. That proposal by its very nature, and the fact that it was publicly made, completely negates the proposition that the articles could be read as charging the crime of blackmail. To hold that a jury could, nevertheless, find not only that the articles charged the crime of blackmail, but also that petitioners should have known this and therefore acted with actual malice, amounts to nothing less than a mockery of the *New York Times* rule.

To base a substantial libel judgment on an accurate report of such clear expressions of opinion on a public issue also contravenes our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v.*

Sullivan, 376 U.S. 254, 270 (1964). The opinions reported are no more intemperate or excessive than those that appear regularly in newspapers throughout the country in connection with hotly contested public issues. At the very least, they should be protected where, as here, the conduct criticized is fully and accurately described in the same article so the reader can draw his own conclusions as to the merit of that conduct and the criticism voiced.

The lower court's additional holding, in connection with the article on Bresler's candidacy for Comptroller, that petitioners' failure to verify further the report that homeowners had started legal proceedings against him constituted evidence of "recklessness sufficient for a finding of actual malice," is equally in conflict with the decisions of this Court. Petitioners had no reason to doubt the accuracy of their report—and therefore to investigate further—since their information came from a number of apparently responsible homeowners who presumably were speaking from first-hand knowledge regarding their complaints against Bresler.

The foregoing are the only holdings of the lower court addressed to the sufficiency of the evidence to meet the constitutional requirement that a defamatory falsehood be published with knowledge of its falsity or with reckless disregard of the truth. The remaining evidence is directed at showing actual malice in the pre-*New York Times* sense of "hostility" and amounts to nothing more than that petitioners, and some of the persons quoted in the articles, had strongly opposed Bresler's land development activities on other occasions.

The fact that this unfounded litigation has proceeded this far with its attendant strain on the limited resources of this small newspaper is itself a serious threat to freedom of the press. To adequately guard against the further chilling effect upon free speech of an extensive retrial of this case, it is respectfully urged that this Court review the evidence and declare that it cannot constitutionally support a judgment for respondent.

Finally, the trial court clearly erred by repeatedly instructing the jury that respondent could recover if he showed actual malice, which was defined as "spite, hostility or deliberate intention to harm" that could be inferred from the publications in issue, and by refusing to instruct on the meaning of reckless disregard of the truth under the *New York Times* standard. In view of the claims made at the trial, these instructions were clearly prejudicial.

ARGUMENT

Introduction

The *New York Times* rule is clearly applicable to the articles in issue. Bresler was not only a member of the Maryland Legislature and later a candidate for the office of Comptroller, but he was also concededly a public figure in Greenbelt as a land developer.[16] Moreover, the articles in issue directly concern "debate about [his] involvement with public issues." *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 164 (1967) (opinion of Chief Justice Warren).

Thus, the citizenry of Greenbelt clearly had a "legitimate and substantial interest" (*ibid.*) in the public issue raised by Bresler's controversial zoning proposal and in the debate over that proposal at the City Council meetings.[17] They

---

[16]Apart from the concession that he was a public figure (E. 19) Bresler had previously received wide, obviously self-induced publicity highlighting the magnitude and importance of his development activities in Greenbelt (Def. Ex. 1, E. 242-3, Tr. 375). Moreover, he clearly thrust himself into the public arena by his repeated and often controversial requests for support from the City Council and other public bodies for his development plans.

[17]The interest of Greenbelt residents in this proposal which directly affected how a substantial portion of their community was to be developed certainly equals the general public interest in college football present in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967). Moreover, Bresler's "views and actions" with respect to this public issue were "of as much concern to the citizen as the attitudes and behavior of 'public officials' with respect to the same issues and events." *Id.* at 162 (opinion of Chief Justice Warren).

were entitled to a full report of the debate on that proposal at the City Council's meetings, including the fact that many interested persons expressed strong opinions that the proposal was an attempt to "blackmail" the City. These strong expressions not only directly related to the proposal, but their inclusion in the News Review's report was necessary to accurately describe the tone and tenor of the debate.

Likewise, as the articles made clear, the debate was encouraged by City officials to assist them in deciding what to do about the proposal and final action was postponed until the second meeting so they would have an opportunity to consider further reaction to the proposal within the community. The importance of such debate to the proper exercise of governmental power in our society places it at the very core of the *New York Times* protection. As stated in *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964), "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people . . . is a fundamental principle of our constitutional system."

This completely unfounded lawsuit was obviously brought to stifle legitimate criticism of Bresler's disregard of the covenants during his campaign. That it has been permitted to proceed this far, with its attendant strain on the resources of this small newspaper, and has resulted in the substantial judgment affirmed below, clearly imposes "the pall of fear and timidity . . . upon those who would give voice to public criticism [and has created] an atmosphere in which the First Amendment freedoms cannot survive." *Id.* at 278.[18]

Thus, the decision below directly challenges the credibility of the *New York Times* rule as an important safeguard to freedom of the press.

---

[18]The $17,500 judgment is a far greater threat to this small newspaper than were the $500,000 judgments in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and *Associated Press v. Walker*, 388 U.S. 130 (1967).

I

KNOWING FALSITY OR RECKLESSNESS CANNOT BE ESTABLISHED BY EXTRACTING A WORD OUT OF CONTEXT AND ASCRIBING TO IT A MEANING WHOLLY FOREIGN TO THE ARTICLE IN WHICH IT APPEARS.

The Court of Appeals completely undermines the constitutional protection by extracting the word "blackmail" out of context and ascribing to it a criminal meaning wholly foreign to the articles in which it appears. Bresler's zoning proposal to which the word "blackmail" clearly referred is accurately and prominently described in each of the articles in issue before the term "blackmail" appears. Moreover, the headlines of the articles, "School Site Stirs Up Council—Rezoning Deal Offer Debated" and "Council Rejects By 4-1 High School Site Deal," made it clear that the articles were reporting the public debate on that public zoning proposal. Thus, it is inconceivable that any reader of the article who reached the word "blackmail" would not know exactly what conduct by Bresler was being criticized.

The nature of Bresler's proposal—which obviously consisted of a threat on his part to exercise his legal right to resist condemnation of the school site if the city did not support his zoning request—and the fact that the proposal was publicly made completely negate the proposition that the articles could be read as charging the crime of blackmail, which the trial court defined as the "extortion of money by threats or overtures toward criminal prosecution or the destruction of a man's reputation or social standing." (E. 311)

Moreover, both articles report expressions of contrary opinion regarding the proposal which specifically dispute the "blackmail" characterization. In the first article immediately after a housewife's reference to the proposal as "a slight case of blackmail" there is a statement by a member

of the City Council—a leader in the community—which expressed the exact opposite opinion as follows:

> Councilman David Champion, however, denied that it was "blackmail," explaining that he would rather "refer to it (i.e., the negotiations—Ed.) as a two-way street." (Pl. Ex. 1, E. 212, Tr. 39)

The same thing is true in the second article which quotes a speaker from the floor:

> [James Martin] suggested that Bresler's action was not "blackmail" but the legitimate advance of his rights to develop his land. Martin suggested, by way of example, that GHI's long-range planning committee had been doing much the same thing some months ago.[19] (Pl. Ex. 2, E. 218, Tr. 39)

Finally, there was no credible evidence that anyone interpreted the articles as charging Bresler with the crime of blackmail. Bresler was unable to identify a single person who he claimed understood the articles as charging the crime of blackmail. Nor was he able to explain how he himself arrived at that interpretation or why he waited nine months before complaining (E. 114-6). No special damages were claimed.[20]

To hold on the basis of the foregoing that the jury could find that the articles charged Bresler with the commission of the crime of blackmail is to disregard completely the

---

[19]This balanced reporting is condemned by the Court of Appeals as indicating "that the original use of the term 'blackmail' was indeed intended and understood to be used in its sense of importing serious criminal conduct on Bresler's part." (E. 301)

[20]"Since give-and-take, sharpness and even coarseness have come to be expected concerning those who entered lists on appeals to the public, and charges are taken with a grain of salt by all concerned, special damages are relevant to show that reputation was injured in that a substantial segment of the community took the publication seriously and in a defamatory sense." *Afro-American Publishing Co. v. Jaffee*, 366 F.2d 649, 661 (D.C. Cir. 1966).

cardinal principle of libel law that words must be construed in the context in which they appear. As stated in 33 Am. Jur., *Libel and Slander*, § 87:

> The intent and meaning of an alleged defamatory statement must be gathered not only from the words singled out as libelous, but from the context; all of the parts of the publication must be considered in order to ascertain the true meaning, and words are not to be given a meaning other than that which the context would show them to have.

Thus, in *Parker v. Kirkland*, 298 Ill. App. 340, 18 N.E.2d 709 (1939), an attorney claimed that the plaintiff's only purpose in bringing a complaint in an administrative proceeding was "of blackmailing" the attorney's client. In affirming dismissal of the complaint, the Court stated:

> [T]he record shows that Kirkland defined what he meant by "blackmailer" and "blackmail"; he was characterizing what he said was Parker's admitted conduct. . . . [A] person may at the time of speaking words which are, in their ordinary signification, slanderous by imputing crime, so qualify them by other words as to show that he uses them in a different sense and that all the words spoken at one time must be taken together, and although one part when detached from another may be slanderous, yet if taken all together, they may not be so. . . . 18 N.E.2d at 718.

See also *Bennett v. Seimiller*, 175 Kan. 764, 267 P.2d 926, 929-30 (1954) and *Flanagan v. Nicholson Publishing Co.*, 137 La. 588, 68 So. 964, 966-67 (1915), both of which involved dismissal of actions challenging the use of the term "traitor."

For the Court of Appeals to make the further finding, premised upon this complete disregard of the context of the articles, that petitioners should have known they were charging the crime of blackmail, and therefore published that charge with knowledge of its falsity, is nothing less than a mockery of *New York Times*. Knowing falsity or

recklessness must be shown by proof possessing "the convincing clarity which the constitutional standard demands." *New York Times Co. v. Sullivan,* 376 U.S. at 285-6. The uncontradicted evidence is that it did not occur to anyone on the News Review that the word "blackmail" might be understood in the criminal sense in the context in which it was used. This testimony was amply corroborated by Bresler's inability to identify anyone who understood the articles as charging a crime or to explain how he himself arrived at that interpretation.[21]

Thus, not only is there no evidence of knowing falsity or recklessness, but the lower court's total disregard for the context of the articles is a dangerous precedent which, if allowed to stand, could seriously undermine constitutional protection of much of the strong or colorful expression commonly associated with "uninhibited, robust, and wide-open" public debate. *New York Times Co. v. Sullivan,* 376 U.S. at 270.

---

[21]The Court of Appeals clearly does not answer the complete absence of proof of knowing falsity by saying that the intended meaning and therefore the "truth" of the word "blackmail" as used in the articles is a jury question (E. 290). As stated by Justice Harlan in *Time, Inc. v. Hill,* 385 U.S. 374, 406 (1967) (separate opinion):

> [I]n many areas which are at the center of public debate "truth" is not a readily identifiable concept, and putting to the pre-existing prejudices of a jury the determination of what is "true" may effectively institute a system of censorship. Any nation which counts the Scopes trial as part of its heritage cannot so readily expose ideas to sanctions on a jury finding of falsity.

II

CLEAR EXPRESSIONS OF OPINION REGARDING AN ACCURATELY DESCRIBED PUBLIC PROPOSAL SHOULD NOT BE ACTIONABLE.

To base a substantial libel judgment on an accurate report of such clear expressions of opinion regarding a public proposal that is fully and accurately described itself contravenes our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. at 270. This Court has repeatedly recognized that public debate frequently entails sharply stated views, the expression of which must be protected if the debate itself is to be encouraged. *Garrison v. Louisiana*, 379 U.S. 64 (1964) (implication that judges were under "racketeer influences"); *Henry v. Collins*, 380 U.S. 356 (1965) (law enforcement officials accused of making arrest as part of "diabolical plot"); *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81 (1967) (court clerk accused of "threats" to "intimidate" another official). As stated in *New York Times:*

> "[I]t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions," . . . and this opportunity is to be afforded for "vigorous advocacy" no less than "abstract discussion." [Citations omitted] 376 U.S. at 269.

The equal importance of protecting such uninhibited debate with respect to public issues involving "public figures" as well as "public officials" was underscored by Chief Justice Warren in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 164 (1967), as follows:

> Our citizenry has a legitimate and substantial interest in the conduct of such persons, and freedom of the press to engage in uninhibited debate about their involvement in public issues and events is as crucial as it is in the case of "public officials." The

> fact that they are not amenable to the restraints of the political process only underscores the legitimate and substantial nature of the interest, since it means that public opinion may be the only instrument by which society can attempt to influence their conduct.

The "blackmail" opinions reported are no more intemperate or excessive than those that appear regularly in newspapers throughout the country in connection with hotly contested public issues. To cite some of the recent examples from major newspapers, which are collected in Appendix A to this brief, the word "blackmail" has been used to describe Representative Natcher's refusal to authorize subway funds without highway construction in the District of Columbia (The Washington Post, July 22, 1969 and The Evening Star, July 22, and August 5, 1969); a religious leader's statement that Conservative Jews who support Israel have a right to influence its religious policies (New York Times, October 27, 1968); Representative Wilbur Mills' attempt to condition a tax increase on a reduction in government spending (The Baltimore Sun, May 4, 1968); a civil rights leader's statement that Negroes should control businesses in the ghetto (The Evening Star, May 2, 1968); and Senator Fulbright's effort to force a change in Vietnam policy by delaying passage of legislation desired by the Administration (The Washington Post, February 29, 1968).

These and other colorful expressions of opinion are the essence of spirited debate. At the very least, they must be fully protected where, as here, the conduct being criticized is fully and accurately described in the same article so that the reader can draw his own conclusions as to the merit of that conduct and the criticism voiced.

Whatever may be the impact of the constitutional protection where it is difficult to differentiate opinion from fact or where the opinion expressed implies other defama-

tory facts,[22] the *New York Times* rule must be dispositive in the instant case. A clear expression of opinion, however strong, which cannot reasonably be interpreted to imply the existence of facts other than those fully and accurately described in the same article, simply does not rise to status of defamatory falsehood which is a *sine qua non* for liability under *New York Times.*

The dispositive importance in the pre-*New York Times* cases of identifying and accurately describing the conduct being criticized is made clear in *Pulvermann v. A. S. Abell Co.*, 131 F.Supp. 617 (D. Maryland 1955), *aff'd*, 228 F.2d 797 (4th Cir. 1956), which involved far stronger expressions of opinion than the instant case. In that case, an official of the Democratic National Committee had been discharged because he and another had been instrumental in obtaining a government contract whereby they were to receive a 5% commission. In reporting this, The Baltimore Sun repeated a statement by another newspaper terming the case "the biggest five percenter deal ever exposed in Washington" and a statement by General Eisenhower, who was then a candidate for President, referring to it as the "sort of crookedness that goes on and on in Washington." In affirming summary judgment for the defendant, the court stated:

> The only portions of the article of which plaintiffs can complain as not being statements of fact is that portion relating to the Herald-Tribune's terming the case "the biggest five percenter deal ever exposed in Washington" and General Eisenhower's referring to it as the "sort of crookedness that goes on and on in Washington". These, however, cannot be deemed unfair comment when read, as they must be, in connection with the remainder of the article, which sets forth in detail the facts to which the comments relate and carries the statement of Westbrook with regard thereto including his denial

---

[22] See Prosser, THE LAW OF TORTS at 814 (3rd ed. 1964); RESTATEMENT OF TORTS, § 606, Comment *b* (1938).

> that he had used or attempted to use his position to influence the awarding of the contract or that his services were of the "so-called 'five percenter' variety." 228 F.2d at 802.

Certainly, no less protection for expressions of opinion on public issues should be afforded under the *New York Times* rule.

III

FAILURE TO VERIFY INFORMATION OBTAINED FROM A NUMBER OF APPARENTLY RELIABLE SOURCES DOES NOT CONSTITUTE RECKLESS DISREGARD OF THE TRUTH.

With respect to the article on Bresler's candidacy for Comptroller, the holding by the Court of Appeals that petitioners' failure to verify further their report that homeowners had started legal proceedings amounted to evidence of "recklessness sufficient for a finding of actual malice" (E. 303) is equally in conflict with the decisions of this Court. In *New York Times* this Court held that the Times' failure to check its own files "supports at most a finding of negligence in failing to discover the misstatements, and is constitutionally insufficient to show the recklessness that is required for a finding of actual malice." 376 U.S. at 287-8. See also *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964); *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81, 84-85 (1967).

In *St. Amant v. Thompson*, 390 U.S. 727 (1968), the defendant in a television speech charged a deputy sheriff with accepting money from a corrupt union official based upon an unverified affidavit from another union member which subsequently proved to be false. In reversing a judgment for the deputy sheriff, this Court stated:

> These cases are clear that reckless conduct is not measured by whether a reasonably prudent man

> would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. 390 U.S. at 731.

The complete lack of any evidence that petitioners in fact doubted—or even should have doubted—the accuracy of the article is clearly exposed in the Court of Appeals' feeble attempt to distinguish *New York Times* (E. 302-3). Thus, the fact that petitioners called Bresler on two earlier occasions pursuant to a News Review policy of verifying doubtful facts hardly established that they in fact entertained doubts on this occasion because they didn't call him. If anything, their failure to call on this occasion indicates that petitioners did not doubt the accuracy of their information regarding the homeowners' proceedings. Nor was there any reason for them to do so since their information came from a number of apparently responsible homeowners who presumably were speaking from first-hand knowledge regarding their complaints against Bresler.

The only other premise for the Court of Appeals' holding that the failure to check court records or call Bresler was sufficient evidence of recklessness was its conclusion that Mrs. Skolnik was a knowledgeable, experienced reporter who "must have known that the report of the actual institution of suits against a builder and developer 'for failure to make construction corrections in accordance with county standards' was calculated to result in serious injury to Bresler's standing as a builder and developer . . ." (E. 302)[23]

In this regard, it should be noted that Bresler's claim of falsity in the use of the term "started legal proceedings" is relatively narrow and technical. He did not dispute the fact

---

[23] Bresler made no attempt to show that the article actually hurt his business.

that a large number of apparently responsible homeowners had complained to him or that they had told Mrs. Skolnik they had gone to their lawyers to start action and had complained to public officials that he had failed to make corrections in their homes in accordance with county standards. It is difficult to see a material difference, in terms of its impact on Bresler's reputation, between a statement of these facts and the statement actually published which was that a number of homeowners had "started legal proceedings."[24] Even if it is assumed, as the court holds, that the layman should equate starting legal proceedings with the actual filing of suits, this would mean no more than that the homeowners had repeated their complaints in court, which, in fact, at least one owner had done (and three did thereafter) by filing suit against corporations in which Bresler was an active principal.

Assuming, *arguendo*, that the error claimed seriously threatened Bresler's reputation, the reasoning of the Court of Appeals would mean that any time a serious charge is made, that fact alone would be sufficient to require that the publisher further investigate regardless of the number and apparent reliability of his sources. That this is clearly not the import of the *New York Times* rule is apparent not only from *New York Times* and *St. Amant* but also from *Garrison v. Louisiana*, 379 U.S. 64 (1964), all of which involved far more serious charges. In *Garrison*, the Court stated as follows:

> [T]he trial court also rested the conviction on additional findings that the statement was false and not made in the reasonable belief of its truth. The judge said:
>
> 'It is inconceivable to me that the Defendant could have had a reasonable belief, which could be defined

---

[24] This difference, unlike the charge that Wally Butts illegally fixed a football game, is hardly one "whose substance makes substantial danger to reputation apparent." *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967). As noted *supra*, p. 10, n.7, the trial court wasn't bothered by this article.

as an honest belief, that not one but all eight of these Judges of the Criminal District Court were guilty of what he charged them with in the defamatory statement [inefficiency, laziness, hampering law enforcement and being under "racketeer influence"]. These men have been honored . . . with very high offices . . . . It is inconceivable to me that all of them could have been guilty of all of the accusations made against them. Therefore, I do not believe that the qualified privilege . . . is applicable . . .'

This is not a holding applying the New York Times test. The reasonable-belief standard applied by the trial judge is not the same as the reckless-disregard-of-truth standard. According to the trial court's opinion, a reasonable belief is one which "an ordinarily prudent man *might be able to assign a* just and fair reason for"; the suggestion is that under this test the immunity from criminal responsibility in the absence of ill-will disappears on proof that the exercise of ordinary care would have revealed that the statement was false. The test which we laid down in New York Times is not keyed to ordinary care; defeasance of the privilege is conditioned, not on mere negligence, but on reckless disregard for the truth. 379 U.S. at 78-79.

IV

THIS COURT SHOULD HOLD THAT THERE IS INSUFFICIENT EVIDENCE AS A MATTER OF LAW TO PERMIT RECOVERY UNDER THE *NEW YORK TIMES* RULE.

Although Bresler was given extremely wide latitude to develop all of the facts and circumstances attending the publication in issue he clearly failed to present evidence which is sufficient as a matter of law to establish that petitioners published a defamatory falsehood about him "with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan*, 376 U.S. at 279-280.

The only holdings of the Court of Appeals addressed to the sufficiency of the evidence to meet this standard of actual malice are with respect to the articles in which the word "blackmail" appears and the article regarding Bresler's candidacy for Comptroller. For the reasons set forth in Points I-III, *supra*, the evidence in this regard clearly "lacks the convincing clarity which the constitutional standard demands." *Id.* at 285-6.

The constitutional protection, however, will not be served if this Court merely reverses on the basis of the clearly erroneous findings with respect to these articles or because of the trial court's equally erroneous instructions on actual malice, *infra*, pp. 34-7. As noted *supra*, p. 20, the fact that this unfounded litigation has proceeded this far, with its attendant strain on the limited resources of this small newspaper, has created "an atmosphere in which the First Amendment freedoms cannot survive." *New York Times Co. v. Sullivan*, 376 U.S. at 278 (1964).

To adequately guard against the further chilling effect upon free speech of an extensive retrial of this case, it is respectfully urged that this Court "review the evidence in the present record to determine whether it could constitutionally support a judgment for respondent." 376 U.S. at 284-5; *Beckley Newspapers Corp. v. Hanks*, 389 U.S. 81, 82 (1967); *Curtis Publishing Co. v. Butts*, 388 U.S. 139, 156-9 (1967) (opinion of Mr. Justice Harlan); *Id.* at 168-170 (opinion of Chief Justice Warren); *St. Amant v. Thompson*, 390 U.S. 727 (1968); *Pickering v. Board of Education*, 391 U.S. 563 (1968). See also, *Time, Inc. v. McLaney*, 406 F.2d 565 (5th Cir. 1969), *cert. denied*, 395 U.S. 922.

Bresler did not seriously contend that any of the other publications in issue contained defamatory falsehoods which were made with knowledge of their falsity or with reckless disregard of the truth. On the contrary, substantially all of his voluminous evidence was directed toward showing that the News Review staff, and many members of the community, were generally "hostile" to him since they opposed his land development activities.

Regardless of how this evidence of opposition to Bresler's involvement in public issues is characterized, it is clearly insufficient to nullify the constitutional protection in the absence of "convincing evidence" that a defamatory falsehood was published with knowledge of its falsity or with recklessness. The rationale for excluding concepts of "spite, hostility or deliberate intention to harm" from the definition of "actual malice" under the *New York Times* rule was succinctly stated in *Garrison v. Louisiana, supra,* as follows:

> Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth. 379 U.S. at 73.
>
> * * *
>
> [O]nly those false statements made with the high degree of awareness of their probable falsity demanded by New York Times may be the subject of either civil or criminal sanctions. For speech concerning public affairs is more than self-expression; it is the essence of self-government. *Id.* at 75-76.

See also, *Beckley Newspapers Corp. v. Hanks,* 389 U.S. 81 (1967); *Pauling v. Globe-Democrat Publishing Co.,* 362 F.2d 188 (8th Cir. 1966), *cert. denied,* 388 U.S. 909 (1967). In *Pauling,* which involved a false factual charge in an editorial that a well-known chemist had been cited for contempt by a Congressional committee, the court stated:

> The claimed proof of malice consisted of the defendant's publication in its newspaper of letters to the editor, a cartoon, and a series of adverse editorial comments on Dr. Pauling both before and after the editorial of October 10; . . .
>
> Our conclusion is that these factors of asserted proof add up to something far less than the definition of actual malice prescribed for the *New York Times* exception and fall short of "the convincing clarity which the constitutional standard demands."

> Pp. 285-286 of 376 U.S., p. 729 at 84 S. Ct. Singly or in the aggregate, these factors might possibly be found to constitute reportorial negligence or antagonism or contempt for Dr. Pauling and his views and methods. Yet, each and all of these have been held to be less than "actual malice". 362 F.2d at 198.

Here, the complete lack of substance to the evidence relied upon by the court to show "personal animus" and "affirmative hostility," which as shown *supra*, pp. 10-14, relates primarily to conduct of the defendant far removed from and unrelated to the publications relied on, further demonstrates the wisdom of precluding recovery under the *New York Times* rule based on evidence purporting to show mere "hostility."

Thus, it is clear that the evidence relied upon, which was fully developed below, is constitutionally insufficient to support a judgment for Bresler.

V

THE TRIAL COURT ERRED IN ITS INSTRUCTIONS:

(A) By repeatedly instructing that recovery could be based upon "actual malice" which was defined as "spite, hostility or deliberate intention to harm" that could be inferred from the publications themselves.

The trial court clearly erred by its repeated instructions that Bresler could recover if he showed "actual malice" which was defined—in connection with the particularly germane defenses of fair comment and right to report public meetings—as "spite, hostility or deliberate intention to harm."

In *Rosenblatt v. Baer*, 383 U.S. 75, 84, the Court stated that almost identical instructions were "constitutionally insufficient" as follows:

> The trial court also charged that "[d]efamatory matter which constitutes comment rather than fact

> is justified if made without malice and represented fair comment on matters of public interest," and defined malice to include "ill will, evil motive, intention to injure . . . ." This definition of malice is constitutionally insufficient where discussion of public affairs is concerned; "[w]e held in *New York Times* that a public official might be allowed the civil remedy *only* if he establishes that the utterance was false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true." (Emphasis added)

In *Beckley Newspapers Corp. v. Hanks, supra,* 389 U.S. at 81, 82, the Court stated that such instructions were "clearly impermissible" as follows:

> Although this action was tried subsequent to the decisions of this Court in [*New York Times; Garrison; Henry v. Collins, and Rosenblatt v. Baer*], and despite the fact that it was recognized at trial that the principles of *New York Times* were applicable, the case went to the jury on instructions which were clearly impermissible. The jury was instructed in part that it could find for the respondent if it were shown that petitioner had published the editorials "with bad or corrupt motive," or "from personal spite, ill will or desire to injure plaintiff."

With respect to the trial court's further instruction that actual malice as so defined could be inferred from the "language" of the publication, the Court in *Henry v. Collins,* 380 U.S. 356 (1965), summarily reversed on the *certiorari* papers a judgment based upon an instruction allowing the jury to "infer malice . . . from the falsity and libelous nature of the statement," pointing out this instruction allowed the jury to find malice from "intent to inflict harm" rather than from "intent to inflict harm through falsehood." 380 U.S. at 357.

In view of the emphasis given to these erroneous instructions, the perfunctory and confusing instruction given by the trial court on the *New York Times* rule at the conclusion

of its instructions clearly was not sufficient to correct the improper definition of actual malice that had been conveyed. The *New York Times* instruction was clearly undercut when the trial court again erroneously referred to petitioners' failure to specially plead truth as a concession that they had falsely charged Bresler with the crime of blackmail. Moreover, the trial court specifically refused to instruct that its previous references to "actual malice" as consisting of "spite, hostility or deliberate intention to harm" were inapplicable under the constitutional standard (E. 199-202, 207-10). That the trial court intended to still convey to the jury the impression that evidence of actual malice, as it had previously been defined, was sufficient to permit recovery is made clear in the colloquy with counsel, *supra*, pp. 16-7, where the trial court stated its understanding of the law that "actual malice is one thing, knowing that the statement was false is Item 2 and a reckless disregard of whether it is true or false is Item 3." (E. 201-02)

Inasmuch as substantially all of Bresler's evidence was directed at showing hostility, these instructions were clearly prejudicial. If the *New York Times* rule is to provide meaningful protection in a jury case, the constitutional standards of proof must be made abundantly clear in the instructions to the jury. Since the constitutional protection was clearly and concededly applicable, the trial court should have given only the constitutional definition of actual malice in its instructions directed to whether or not the articles were actionable, as was requested by petitioners. Certainly, it should not be assumed as the Court of Appeals so casually did below, that the jury understood the instructions on this critical point differently from the trial court which gave them (E. 318). See *Time, Inc. v. Hill*, 385 U.S. 374, 396 (1967).

(B) By refusing to instruct on the meaning of reckless disregard of the truth.

In view of Bresler's claim of recklessness in connection with petitioners' failure to further verify their statement, in the article on Bresler's candidacy for Comptroller, that homeowners had started legal proceedings against him, the trial court similarly erred in refusing to instruct that reckless disregard of the truth under the constitutional standard means "more than mere negligence" and requires "a high degree of awareness of . . . probable falsity." This instruction was clearly necessary to convey to the jury the important subtleties inherent in the constitutional standard of recklessness as defined in *Garrison v. Louisiana, supra,* 379 U.S. at 74, and the other decisions of this Court cited in Point III, *supra,* pp. 28-31.

CONCLUSION

For each of the foregoing reasons, petitioners ask this Court to reverse the judgment of the Maryland courts; to vacate the $17,500 award; to direct that the declaration therein be dismissed with prejudice and to award costs to petitioners.

Respectfully submitted,

Roger A. Clark
1730 K Street, N. W.
Washington, D. C. 20006

Attorney for Petitioners

December 4, 1969

APPENDIX A

The Washington Post

TUESDAY, JULY 22, 1969

Phillips Hits 'Blackmail' In Metro Plan

By Richard Prince
Washington Post Staff Writer

Washington Democratic leadership yesterday told the City Council it should temporarily give up the long-sought-after subway rather than submit to building the controversial Three Sisters Bridge.

The building of the Potomac River span is part of the price being asked by Rep. William H. Natcher (D-Ky.) head of the House Appropriations subcommittee on the District, in order to release subway money.

* * *

Democratic National Committeeman Channing E. Phillips, who said he was speaking for the local Democratic leadership and "the city's Democratic majority," said yesterday Natcher's position amounted to "blackmail" and called upon the city government to "stand up like men against our colonial master."

If the subway must be sacrificed for the time being, he said, that is "the price of freedom" that "has always been high."

"It is being said that the subway is more important than the Three Sisters Bridge," Mr. Phillips told a press conference. "But everyone knows that blackmailers, when successful, almost always demand more and more. If the Three Sisters Bridge can be obtained for this year's subway appropriations, the North Central Freeway can be forced on the community by withholding next year's subway funds. This same method can then be used to force other programs on the District government.

"If Congressman Natcher is to run the District government, let him do it directly and openly. There is no need for the City Council to do his dirty work for him."

* * * *

The Evening Star
Washington, D. C., Tuesday, July 22, 1969

D.C. Council Calls Off Subway-Roads Session

By STEPHEN GREEN
and WILLIAM BASHAM
Star Staff Writers

The District City Council today abruptly called off a meeting scheduled for this morning to resolve Washington's subway-freeway impasse.

In closed session yesterday the council had agreed to approve construction of the Three Sisters Bridge in return for congressional release of subway construction funds.

However, several council members decided overnight that they need a guarantee that the House of Representatives would, in fact, release the $18.7 million subway construction money if the council should take the politically sensitive step of approving the bridge.

* * *

Several council members asked Chairman Gilbert Hahn Jr. to visit Rep. William Natcher, D-Ky., to obtain a guarantee that he will agree to release of the subway funds, if the council okays the bridge. However, Hahn reportedly is reluctant to undertake the visit since he is a Republican and Natcher, who has been the key figure in holding up subway funds, is a Democrat.

* * *

Led by Natcher, the House has refused to appropriate $18.7 million, in subway construction funds until the city agrees "beyond recall" to build the Three Sisters Bridge and other segments of the interstate road system that Congress ordered built in the 1968 Highway Act. The Senate has approved the appropriation.

Freeway foes contend the roads and bridge will bring unnecessary traffic to the city, damage its vitality and destroy needed housing.

The Rev. Channing E. Phillips, District Democratic national committeeman, reiterated his opposition to the Three Sisters Bridge yesterday and Bruce Terris, chairman of the District Democratic Central Committee, said Phillips was speaking for the committee.

Phillips charged that Natcher and Congress are attempting to "blackmail" the city. "I believe the freeways should not be built because they are bad for the city. But this is not the issue . . . the issue is whether the city government will bow now to congressional threats. While the subway . . . is important, the price of freedom has always been high," he said.

The Evening Star

WASHINGTON, D. C., TUESDAY, AUGUST 5, 1969

Mrs. Spellman Asks Delay Of Subway Planning Funds

By THOMAS LOVE
Star Staff Writers

The chairman of the Washington Suburban Transit Commission is recommending that no more money be spent on planning the area subway system until the present impasse over freeways is solved.

Chairman Gladys Noon Spellman said today that she will make her recommendation to the authority at its meeting Thursday.

Congress has refused to appropriate the District's portion of subway construction costs. Rep. William H. Natcher, D-Ky., says he will continue to withhold all money until bridge and freeway projects are under way.

The District government, however has refused to start work on the controversial portions of the freeway system.

Until the federal funds are voted, construction on the Metro system cannot begin.

Capitol Rally

The freeway issue was raised in the District today as about 70 Washington area residents rallied on the steps of the Capitol to protest the proposed ABM. The speakers, however, used the forum to attack the freeways, the District's lack of home rule and Mayor Walter E. Washington.

School board member Julius Hobson accused Mayor Washington of having no "guts or backbone for not helping the protesters block the ABM proposal.

Hobson also shouted at the crowd about "an idiot named Natcher" who has tried to "blackmail" the city to build freeways.

Hobson said the city is overwhelmingly against the freeway. He said the nation is 80 percent against the ABM system, on which the Senate will vote tomorrow.

NEW YORK TIMES - October 27, 1968

'BLACKMAIL' LAID TO 2 JEWISH UNITS

Orthodox Rabbi Scores Plan on Religion in Israel

A leader of Orthodox Judaism charged the major Conservative and Reform rabbinic groups in this country with "attempted blackmail" yesterday in what he described as their efforts to "foist" upon Israel "unwelcome religious practices and philosophies."

The Orthodox leader, Rabbi Zev Segal, the president of the Rabbinical Council of America, referred to a joint agreement reached last Wednesday by 60 Conservative and Reform leaders to cooperate in developing a "liberal religious alternative" to Orthodox Judaism in Israel.

For years, the Central Conference of American Rabbis (Reform) and the Rabbinical Assembly (Conservative) have been endeavoring to strengthen their influence in Israel. But under Israeli law the right to perform marriages and exercise other religious functions is reserved for Orthodox rabbis.

First Joint Meeting

Participants in Wednesday's meeting included Rabbi Ralph Simon, the president of the Rabbinical Assembly, and Rabbi Levi A. Olan, the president of the Central Conference. It was the first joint session of the leaders of the two groups.

In his statement yesterday, Rabbi Segal was particularly critical of a comment made at the meeting by Rabbi David Polish, spiritual leader of the Beth Emet Free Synagogue in Evanston, Ill.

Emphasizing the need for continuing identification with Israel, Rabbi Polish told the Conservative and Reform leaders that "so far we have manifested this identity not only financially but by bringing influence to bear on Israel's economic policies."

"We have no less a right and a claim to influencing, for a time, its religious policies," Rabbi Polish said.

To this, Rabbi Segal replied: "By implying that the financial support of the Reform and Conservative movements in the United States of Israel's needs is conditioned upon Israel's acceptance of their religious ideologies, the leaders of the Reform and Conservative movements are engaging in a form of attempted blackmail that is repugnant to all for whom the ideal of religious freedom is precious."

* * * *

THE BALTIMORE SUN

BALTIMORE, SATURDAY, MAY 4, 1968

'BLACKMAIL' TERM USED ON TAX SNAG

Johnson Calls Bill Top U.S. Need Behind Peace Solution

By RODNEY CROWTHER
(Washington Bureau of The Sun)

Washington, May 3—In blunt language, President Johnson today virtually accused the House Ways and Means chairman, Representative Mills (D., Ark.) of trying to "blackmail" the Administration into yielding on reduction of Government spending before he will move a tax bill.

Mr. Johnson said what needs to be done more than anything else—except to try to find a peace solution—is to "pass a tax bill without any 'ands,' 'buts' or 'ors.'"

"If they want to effect reductions," he said of Congress, "then as each appropriation bill comes along, they can offer their amendments like men out on the floor and call the roll.

"But don't hold up a tax bill until you can blackmail someone into getting your own personal viewpoint over on reductions."

Cut Called Inadequate

Chairman Mills yesterday indicated that he feels the $4,000,000,000 spending cut proposed by the House Appropriations Committee is inadequate, and that a program must be prepared which will reduce the Federal deficit from $25,000,000,000 to below $10,000,000,000.

President Johnson told his news conference today that to accede even to the $6,000,000,000 spending cut the Senate voted in connection with the 10 per cent surtax "would really bring chaos to the Government."

Anything beyond a $4,000,000,000 cut in spending, he said, would either be "a phony paper cut" or would seriously damage vital Government activities.

The Evening Star

THURSDAY, MAY 2, 1968

Letters to the Editor

Black Business

* * * *

SIR: Marion Barry has announced that if the people whose businesses were burned out want to come back they are going to have to give 51 percent control to Negroes or else be burned out again.

The answer to this sort of blackmail should be plain. The white merchants should collect their insurance and leave the ghetto. Let the debris remain. Leave the blackmailers without shops and other conveniences provided in the past. To comply with Barry's threat is to take a step toward establishing the kind of country that cannot endure. Government by blackmail is unendurable.

Emett Harris.

The Washington Post
THURSDAY, FEBRUARY 29, 1968

Debasing the Debate

The tone and temper of the Vietnam debate is getting uglier at just the moment when the need is greatest for a national display of unity and resolve. It is one thing for Sen. Fulbright and the war critics on his Foreign Relations Committee to challenge the President's Vietnam policy and call for a review. It is nothing less than blackmail to make "the prospect of negotiation" with an apparently intransigent enemy the price for passage of appropriations for the Asian Development Bank "and a lot of other bills."

In the first place, the idea of robbing the Asian Bank to pay off an old score with the President makes no sense unless the Senators who advocate it are prepared to introduce a measure to repeal the Tonkin Resolution and advocate this country's withdrawal from the Asian scene. The Asian Development Bank—and the concern for economic development it carries with it—is the single most important non-military contribution this country has made to the betterment of Asian life and the promotion of political stability of the area in many years. To deny it the $200 million in special funds it so urgently needs to operate effectively is to create the very impression the war critics would presumably like to avoid—that the United States has nothing much to offer Asians in their search for security save shot and shell.

Before anything else is done, the Foreign Relations Committee members should take the advice of one of their most distinguished and statesmanlike colleagues, Sen. Cooper, and forswear this kind of senseless pressure tactics in a time of serious crisis. That much said, it needs to be added that it took a great deal of deep-seated bitterness to produce so crude a power play—and this bitterness, justified or not, is a fact of political life that is not going to be washed away by the kind of appeal for unity the President made in Dallas the other day.

The New York Times

THURSDAY, FEBRUARY 8, 1968

The Mayor Acts

Mayor Lindsay's ultimatum to the striking sanitationmen who have held the city in bondage since last Friday is precisely the action required to save the city from disaster. With New York buried in garbage and a major snowstorm impending, it would have been suicidal to wait—and wait—and wait for the union to end its illegal strike.

The Mayor will have overwhelming public support in his declaration that the city cannot submit to "blackmail" by any group of unionized civil service workers, perverting its control over a vital public service into an instrument of extortion. Collective bargaining cannot go forward while the city is being held for ransom as surely as if it had been captured by a band of pirates.

SUNDAY, FEBRUARY 11, 1968

Break in the Siege

The immediate reaction of all New Yorkers to the end of the criminal sanitation strike must be one of overwhelming relief that the mountains of filth will be removed from the streets before the city is devastated by disease and fire. But the arrangement under which Governor Rockefeller has bought the return to work is as bizarre as anything that has happened in all the nine days of nightmare since this strangest of civil service tie-ups began.

Mayor Lindsay has properly stood fast in his refusal to pay "blackmail" to the sanitation union while its members were off their jobs in defiance of law, court order and civic responsibility. The Governor has given a host of rationalizations for his refusal to call out the National Guard. Undoubtedly the two that were controlling were politics and the threat of a general strike held over the city by the Central Labor Council.

THE EVENING STAR
Washington, D. C., Friday, February 9, 1968

Lindsay Blasts Panel's Plan To End Strike

NEW YORK (AP) — Mayor John V. Lindsay rejected early today the recommendations of Gov. Nelson A. Rockefeller's special panel for ending the 8-day-old sanitation men's strike.

Hours later Rockefeller turned dow down Lindsay's renewed call for National Guard help in removing the tones of festering garbage.

The striking sanitation union had agreed to the special panel's offer of a $425 annual pay increase, only $25 above a state mediator's proposal made before the strike. The city had also rejected the $400 settlement offer.

'Very Hopeful'

Asked if he thought the Guard would be called out, Rockefeller replied: "No, I honestly don't."

The governor said he was "very hopeful" that Lindsay would change his mind about the formula offered by the special mediators.

Shop stewards for the strikers voted unanimously to accept the recommended settlement, which would have raised their pay $425 a year retroactive to July 1.

The Washington Post
FEB 8 — 1968

Lindsay Bids Garbagemen Return

NEW YORK, Feb. 7 (UPI) —Mayor John V. Lindsay, warning that New York City "will not pay blackmail," tonight told striking sanitation workers that if they do not return to work by 7 a.m. Thursday he will seek state help to remove tons of garbage from streets and sidewalks.

* * *

In one of his strongest statements yet, Lindsay noted that the central issue of this strike is whether New York can be "blackjacked into awarding exorbitant contract demands to a union simply because that union is willing to break the law.

"The city will not submit," he said. "It will not pay blackmail."

At a predawn news conference Lindsay declared: "I said yesterday the city would not pay blackmail in order to conclude this strike. The proposed settlement, in my view, asks the city to pay a little blackmail."

THE EVENING STAR A-21
Washington, D. C.
Thursday, May 29, 1969

Social Welfare Parley's Moves Please Militant

By BETTY JAMES
Star Staff Writer

NEW YORK — The beleaguered National Conference on Social Welfare moved to its close today on a first note of harmony.

Dr. George A. Wiley, executive director of the National Welfare Rights Organization — which has twice disrupted the confernece since it began Sunday night — told a press conference yesterday he was "very satisfied" with the way the conference had responded to his group's demands.

But many of the conference's estimated 7,000 delegates disagreed, openly calling the welfare rights group's tactics on Sunday night "blackmail." At the opening session, members of the rigst organization formed human chains around the doors of the New York Hilton Hotel ballroom, refusing to let delegates leave until they had contributed to the organization.

Later, the conference voted to raise $35,000 to allow at least 250 poor people to attend next year's conference, an action still to be ratified by mail ballot.

The Philadelphia Welfare Rights Organization yesterday blasted that decision, saying, "Robbery for whatever reason will never solve the basic problems of poverty."

The statement declared, "The Philadelphia Welfare Rights Organization was not part of and does not condone the tactics and 'supposed' militant action on the part of the National Welfare Rights Organization's staff and some of its members . . . Society is already too violent."

Wiley, though conceding the Philadelphia chapter was "entitled to their opinion," disagreed that the Sunday tactics constituted "robbery." Many people at the conference had stopped him in the last few days to praise the "honest dialogue" that resulted after the opening session, he said.

In a separate action, the conference created a committee to raise funds for the welfare rights group. About $2,000 has been raised so far. In addition, delegates themselves have contributed about $4,000 to the rights organization, which has set up solicitation booths near the registration desk.

The Philadelphia chapter also attacked the national organization for accepting a $434,930 grant from the U.S. Labor Department to help implement the Work-Incentive Program for Relief Recipients (WIN), which the Philadelphia group said is designed to remove mothers from the home and place them in "slave labor" jobs.

WASHINGTON POST, February 28, 1968, page D7

Wire Services Block New Paper, Chalk Says

By George Lardner Jr.
Washington Post Staff Writer

Financier C. Roy Chalk protested in absentia to the Senate Antitrust Subcommittee yesterday that the Nation's big wire services were unfairly blocking his attempts to start a daily newspaper here.

The editor of Chalk's weekly Washington, D.C., Examiner, Jack Limpert, told the Subcommittee that United Press International had initially demanded what amounted to a "blackmail payment" to keep it from entering the daily newspaper field.

"We are thus at the mercy of our competitors, who set the rules of the game," Chalk reported to the Subcommittee.

Chalk himself was in Central America yesterday and Limpert presented the financier's prepared statement.

Both UPI and the Associated Press, Chalk complained, refuse to supply their news services to papers without a substantial paid circulation.

Most of the Examiner's 200,000 copies a week are distributed free from racks on Chalk's D.C. Transit and W. V. & M. Coach Co. buses. Chalk said this was the only way—short of a "huge, go-for-broke investment the first year"—that Examiner could build up advertising and readership.

The Audit Bureau of Circulation, the Subcommittee was told, has similar restrictions. Most advertisers, Chalk said, require ABC audits as proof of circulation, but ABC, a newspaper-supported cooperative, won't make the audits for publications with a paid circulation of less than 50 per cent.

The system, he said, protects Washington's three dailies, The Washington Post, the Evening Star and the Daily News, and effectively stifles competing new voices.

"It may take us five years to build up to 100,000 paid circulation," Chalk said in his statement.

UPI said it would save its reply for a March 5 hearing before the Subcommittee. Reached in New York, UPI General Sales Manager Wayne Sargent said he would prefer to read in full what Limpert, a former UPI regional executive, and Chalk had said.

FILE COPY

JAN 2 1970

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. STOLTZE,

Petitioners,

v.

CHARLES S. BRESSLER,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT

ABRAHAM CHASANOW,
151 Centerway,
Greenbelt, Maryland 20770,
Attorney for Respondent.

HOWARD S. CHASANOW,
Of Counsel.

The Daily Record Co., Baltimore, Md. 21202

INDEX

	PAGE
QUESTION PRESENTED	1
STATEMENT	2
Petitioners' Statement	4
The Publications	5
Blackmail Articles	8
News Review Sponsorship of Lawsuit	10
The Covenants Controversy	13
ARGUMENT	14
Out of Context	14
Repetition of False Statements	15
Public Officials and Public Figures	16
Actual Malice	20
Instructions as a Whole	22
Opportunity to Rebut	25
Comparison with *New York Times* and *Butts*	26
The Court of Appeals Decision	28
Petitioners' Appendix A	30
CONCLUSION	31

CITATIONS

Cases

Associated Press v. Walker, 388 U.S. 130 (1967) 16

Beckley Newspaper Corp. v. Hanks, 389 U.S. 81 (1967) 17

City of Greenbelt v. Bresler, 248 Md. 210, 236 A. 2d 1 (1967) 13n

Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967) 16, 17, 18, 19, 21, 22, 27, 28

PAGE

Door v. United States, 195 U.S. 138 (1904) 14

Garrison v. Louisiana, 379 U.S. 64 (1964) 17, 18

Greenbelt Homes, Inc. v. Board of Education, 248 Md. 350, 237 A. 2d 18 (1968) 3

Negley v. Farrow, 60 Md. 158 (1883) 28

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 1, 5, 17, 18, 19, 21, 25, 26, 27

Plenol v. Beuttler, 253 Iowa 259, 111 N.W. 2d 669 (1961) 28n

Rosenblatt v. Baer, 383 U.S. 75 (1966) 17, 18, 21, 23n, 26

Schneidman Heating, Inc. v. New York Plumbers' Specialities Co., 238 App. Div. 318, 264 N.Y.S. 146 (1933) 28n

Seaboard Air Line R. v. Padgett, 236 U.S. 668 22

Time, Inc. v. Hill, 385 U.S. 374 (1967) 18, 25, 26

Williams v. Daily Review, Inc., 236 Cal. App. 2d 405, 46 Cal. Rptr. 135 (1965) 28n

Miscellaneous

American Jurisprudence, Libel and Slander, Vol. 33 15

American Jurisprudence, Newspapers and Press Associations, Vol. 39 15

Prosser, The Law of Torts, 2nd Ed., 1955 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners,

v.

CHARLES S. BRESLER,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF FOR RESPONDENT

QUESTION PRESENTED

Whether the rule of constitutional protection in libel cases, as announced in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), is the only rule applicable in a case involving defamatory criticism of the business activities, but unrelated to the official conduct, of a builder and developer who was also a delegate to the Maryland House of Delegates from a different county, and who later became a candidate for State Comptroller.

STATEMENT

The Greenbelt News Review, a weekly which is published by petitioner corporation, is the only newspaper published in Greenbelt (E. 160). Its circulation is approximately 4,500 copies each week, of which only about 75 are paid subscriptions which are mailed[1] (E. 22); the other copies are delivered free of charge to every house in Greenbelt (E. 20).

The petitioner, Alfred M. Skolnik, is President of the corporation, writes many of the feature articles and editorials, and is one of the five members of the editorial board which edits all the material published. His wife, Elaine, is one of the several housewives who serve as reporters, and she also writes many of the feature articles as well as a weekly column.

Mr. and Mrs. Skolnik are active owner-members of Greenbelt Homes, Inc. (GHI), which once owned all the land involved in the controversies, but sold it at a profit instead of developing it (E. 26). GHI strongly opposed the zoning of adjacent Parcels 1 and 2 for townhouses,[2] although it is building townhouses on its own property (E. 77).

GHI also fought the Board of Education's plan to build a high school on part of Parcels 1 and 2, near its wooden rowhouses, and tried to compel the Board to build the school on more remote and more expensive Parcel 15. It delayed the construction of the school by its unsuccessful suit and appeal "to thwart a Board of Education's choice of

---

[1] Respondent tried to purchase a mail subscription, but was told "they didn't mail them out" (E. 94).

[2] This was the zoning recommended by the Maryland National Capital Park and Planning Commission, the county's official planning body, in its Master Plan for the Greenbelt-College Park area.

a school site", *Greenbelt Homes, Inc. v. Board of Education*, 248 Md. 350, 237 A. 2d 18, 19.[3]

Mr. and Mrs. Skolnik are also active members of an unincorporated organization called "Citizens For a Planned Greenbelt" (CFPG), whose only requirement for membership is payment of one dollar (E. 64). CFPG is run by a twenty-member Steering Committee, which includes Mrs. Skolnik, Charles Schwan (President of GHI), Mayor Edgar L. Smith, Albert Herling (who was reported as accusing respondent of blackmail and skulduggery (E. 218)), Marjorie Bergemann and Mrs. Joseph Rosetti (both of whom were elected after they had made the blackmail accusations (E. 212)).[4]

Although much attention at the trial was focused on the two articles in which respondent was accused of blackmail, they were only a part of a series of libelous attacks made on respondent through articles and editorials included in the 45 exhibits placed in evidence by respondent. Several of these attacks were made *before* the blackmail articles, including one article by petitioner Skolnik headlined "City Battles Bresler on 2 Fronts; . . ." and subheaded "Court Suit", which falsely stated that "The City and Bresler will also be at odds this week . . ." (Pl. Ex. 8, E. 227). The article clearly showed that petitioner Skolnik knew the details of the suit, including the fact that Bresler was *not* a party.

Prior to the blackmail articles, there was another article written by petitioner Skolnik about a meeting of the city council, in which he reported (E. 231):

---

[3] Ironically, it was GHI President Schwan's statement of an alleged threat by respondent to delay construction of the high school which was followed by the blackmail accusations at the first city council meeting (E. 212).

[4] The Board of Education also threatened to sue CFPG for an allegedly false accusation unless it either proved it or withdrew it and apologized (E. 234-235).

"It took the better part of two hours before the council and the audience decided that it made much more sense to stop attacking each other and concentrate on a common target — Bresler — who wasn't there."[5]

Another article prior to the blackmail articles contains some enlightening background (Pl. Ex. 24-A, E. 76-77). It reported that former (and present) City Councilman Dick Pilski questioned the legality of a "partnership" arrangement between GHI and the city council. He accused each of them and the News Review of "employing sensationalism to such a degree it has 'created panic among citizens' ", by misrepresenting the effect of the master plan developed by the Maryland National Capital Park and Planning Commission for the Greenbelt-College Park area. His "partnership" charge referred to a similar proposal previously made by respondent for the "joint development of a master plan" which the city council had rejected (E. 78), because it could lead to a "conflict of interest".[6]

Petitioners' Statement

Petitioners' statement that this action stems from a heated controversy over zoning and land development in the City of Greenbelt, Maryland, is only partially correct. Several of the 45 exhibits placed in evidence were knowingly false reports of lawsuits allegedly filed against respondent which pertained solely to his *private* activities as a builder and were damaging to his business reputation (E. 223, 227).

---

[5] It appeared to be common practice to attack Bresler at city council and other meetings when he wasn't there to defend himself; including the two meetings at which he was accused of blackmail and skulduggery.

[6] No conflict of interest ever developed between the city and CFPG. As Mayor Smith testified on cross-examination (E. 128), neither he nor the city council ever voted contrary to that group's recommendations. He, and Councilman Francis White, and Councilman Cliff Simonson, were on the Steering Committee of CFPG (E. 30).

Respondent also disagrees with petitioners' statement that ". . . it was assumed throughout the trial that the *New York Times* rule was applicable to the articles in issue." That was not the trial court's assumption, as shown by its discussion with petitioners set forth in their brief (p. 16) — although the trial court deferred to petitioners by instructing the jury in the exact language of *New York Times* (E. 207-209). Nor was it respondent's assumption, as none of the articles involved criticism of his *official* conduct, to which the opinion in *New York Times* clearly limited itself.[7] In fact, it was not even petitioners' own assumption, as they tried to get the trial court to rescind the phrase "official conduct" from its *New York Times* instructions (E. 205, 206, 208, 210), despite the unequivocal statement in *New York Times* that it was ". . . a federal rule that prohibits a pubic official from recovering damages for a defamatory falsehood relating to his official conduct . . ." 376 U.S. at 279, 84 S. Ct. at 726.

The Publications

The Amended Declaration alleged that respondent was a builder and developer (E. 1) and that the libels were published, among other reasons, "for the purpose of injuring Plaintiff in his aforesaid business and occupation . . ." (E. 3).

One example of this was Plaintiff's Exhibit 6, which contained the allegation (E. 223):

> "Reportedly, a number of home-owners, both in the Lakecrest and Boxwood developments, have started legal proceedings against Bresler for failure to make

[7] Respondent agrees that *New York Times* is applicable insofar as it relates to the separate concurring opinion of Mr. Justice Goldberg, which said: "This is not to say that the Constitution protects defamatory statements directed against the private conduct of a public official or private citizen." 376 U.S. at 301, 84 S. Ct. at 737.

construction corrections in accordance with county standards."

The undisputed testimony of respondent was that no legal proceedings had ever been started against him for failure to comply with county construction standards (E. 94).

Petitioner Skolnik said he and his wife had written the article jointly, but that his wife had written the paragraph in issue (E. 53).

The meeting at which the home-owners "attempted" to air their grievances was not a public one, as alleged in petitioners' brief (p. 9), but a meeting of the group which called itself "Citizens For a Planned Greenbelt" (E. 173). Nor was the discussion held at the meeting, as the chairman said complaints about construction of private homes had nothing to do with planning for Greenbelt and wouldn't listen to them (E. 53-54), although Mrs. Skolnik did after the meeting. Likewise, Mrs. Skolnik's testimony described them as "Boxwood homeowners" (E. 173) — not Lakecrest homeowners.

When asked by deposition and interrogatories before trial for evidence of any legal proceedings which had been started against Bresler prior to the article, the only lawsuit cited by petitioner Skolnik was a suit by a Mr. Foley against Charles Burton Builders, Inc., for rescission of his contract to *purchase* a house from that corporation.

When asked at the trial about suits which had been filed, petitioner Skolnik said (E. 54): "No, I don't know anything about suits. All I know is that people were complaining about the fact that they were having troubles —". He justified the use of the words "legal proceedings" with the contention that "Well, that covers complaints."

Petitioner Skolnik's obvious intention to harm respondent's reputation as a builder by a knowingly false statement is disclosed by his testimony (E. 54): "It was a proper description that people were going to their lawyers *in bunches* and *filing* proceedings about their houses." (Emphasis supplied).

No home-owner said he had "started legal proceedings against Bresler". That was petitioners' own phrase, to lead their readers to believe that suits had been filed against respondent "in bunches". It was not merely reckless disregard of truth, but knowing falsity.

The same article also falsely inferred that Bresler was the defendant in another suit by the city when it stated, in the preceding paragraph (E. 223), that: "The city also resorted to legal action *early in the construction of Boxwood Village* because drainage problems in the development caused damages in the Lakewood subdivision." (emphasis supplied). Petitioner Skolnik had written the previous article about the issue (E. 227); was thoroughly familiar with all the details of the case; knew that the suit was not against Bresler (E. 51) but against Ivy Homes, Inc., (in which Bresler had no interest) and Boxwood Villege, Inc. (in which Bresler had a one-sixth interest); knew that the case had been dismissed against Boxwood Village, Inc., more than a year ago because it was not the owner of the property involved; knew that Ivy Homes, Inc., had consented to a judgment against it — but *repeated* the knowingly false allegation against Bresler *more than a year later*. Petitioner Skolnik's by-line did not appear in the article, as it normally did, but he admitted he and his wife had written it (E. 53).

There were numerous other publications which were intended to expose respondent to public scorn, hatred and

contempt, and to injure him in his business as a builder and developer. They included the article misleadingly headed "Greenbelt Loses First Round on Bresler's 1962 Covenants" by Al Skolnik (which the article discloses pertained to the dismissal of a suit against Twentieth Century Investments, Inc., in which corporation Bresler was not alleged to, nor had, any interest (E. 228); a letter headed "An Unethical Trade" (E. 214); a letter headed "Another Crippling Blow" (E. 22) (by Clifford Simonson, a member of the Steering Committee of CFPG): and a letter headed "Startled at Bresler" (E. 222).

Blackmail Articles

Petitioner Skolnik defended the publication of the first article which accused the respondent of blackmail (Pl. Ex. 1, E. 211-214), on the ground that he was merely reporting what was said by members of the audience at the city council meeting. Although he contended that ". . . we didn't focus on that word . . ." (E. 35), he did not explain why the word "blackmail" was featured in a caption or subheading (E. 212). Mr. Skolnik, who has three degrees, including a Ph.D., said he understands that blackmail ". . . is somewhat in the category of a crime . . ." (E. 32).

Mr. Skolnik had previously testified at his deposition prior to trial that he didn't know to whom Mrs. Bergemann was referring when she used the word "blackmail", as he wasn't at the meeting (E. 39). At the trial he said he "now recollect(s)" that he was there for at least part of the meeting (E. 39).[8]

[8] Mr. Skolnik likewise precluded further examination at the same deposition concerning another article published in the News Review, by disclaiming knowledge of who wrote it (E. 86). At the trial he admitted that he "may have written most of this" (E. 87). In neither case did he notify respondent before trial that his answer was incorrect.

Mayor Smith, who testified for petitioners, said he presided at the meeting and that: "In my opinion there was nothing to justify the use of the word 'blackmail' by anyone from the audience" (E. 132). He further said: "— there was nothing that I know of, that they had any fact that they had, which would justify the use of the word 'blackmail'. If they had something other than what they had presented at the Council" (E. 132). He also said: "I would say that based on the fact and information that we had, that 'blackmail' or 'blackmailing scheme' was too strong a word."

However, petitioners' witness, Mrs. Skolnik, when asked if the word "blackmail" was a proper description of respondent's actions, replied: "In the context of the meeting, yes, it was proper" (E. 185). She also knew that blackmail "could be a crime" (E. 184).[9]

Mr. Skolnik defended the use of the word "skulduggery" in the second article (Pl. Ex. 2, E. 216-219) with the statement that it "is the word that the reporter (Mrs. Williamson) used to interpret what Mr. Herling was saying" (E. 43). Mrs. Williamson, petitioners' witness, denied this. Her testimony was (E. 152):

> "Q. You said here also 'Albert Herling suggested skulduggery'.
>
> A. *I did not use that word.* This is a good example of what happens on Tuesday night when the other members of the Editorial Board will read through an article. Apparently it was an effort to shorten. This was quite a long article and this is somebody else's phrase. That I do recall.
>
> Q. So the article you wrote and has your by-line on there—

[9] Petitioners' brief alleges (p. 24) that: "The uncontradicted evidence is that it did not occur to anyone on the News Review that the word 'blackmail' might be understood in the criminal sense in the context in which it was used."

A. Right.

Q. —uses a word you didn't write in the article, that is 'skulduggery'?[10]

A. *That often happens;* yes."

Mrs. Williamson justified her repetition of the word "blackmail" in her article on the ground that ". . . I paraphrased his sentence but I selected out the word 'blackmail' was his word and I wanted to denote it was his word I was picking up . . ." (E. 152).[11] She saw nothing wrong in doing so as "The word 'blackmail' had been quoted from the week before" (E. 154). She further testified that "There is no connection as far as I can see between what Mr. Bresler, what the situation — the offer, there is no relation between that and a crime of blackmail. There is a difference" (E. 155). Her article also noted that "The mayor occasionally had to caution them to refrain from engaging in personalities." (E. 217).

News Review Sponsorship of Lawsuit

One of the unusual aspects of this case was the active participation of the News Review in sponsoring and collecting funds for the filing of a lawsuit against respondent (and others). The suit contained serious charges of fraud, misrepresentation, etc., and claimed damages in excess of two million dollars, with an incidental claim for injunctive relief. Four of the apparently unwilling plaintiffs

---

[10] Mr. Skolnik defined the word "skulduggery" as "something amiss, something improper perhaps" (E. 42). The Court of Appeals quoted two dictionary definitions of the word (E. 300), and said there is little doubt that the word was intended to indicate dishonest conduct on the part of Bresler and to hold him up to ridicule and contempt.

[11] Mayor Smith testified that Albert Herling, who was quoted as making the blackmail accusation (and who serves with Mrs. Skolnik and GHI President Schwan on the Steering Committee of CFPG), would be known by anyone who attends city council meetings as having "made some pretty sweeping statements before" (E. 130).

withdrew before and during trial, and the trial court granted a directed verdict against the remaining plaintiffs, which was not appealed.

Mr. Skolnik testified that Mayor Smith had suggested the suit to supplement the city's suit against respondent (E. 65, 67). Mayor Smith denied this (E. 127). Mr. Skolnik's sworn answers to interrogatories disclosed that the legal fund had been initiated by Mr. Stern and Mrs. Skolnik (E. 184), both members of the staff of the News Review and the Steering Committee of CFPG.

Petitioner Skolnik was asked if he and his wife assisted in any way in the collection of the legal funds, and he answered: "I don't recall any activity in that respect" (E. 62). When questioned further about one of the News Review articles which solicited legal funds and listed three unidentified telephone numbers to call, he said "The latter number is my wife's number" (E. 62). When asked further, "You don't have separate telephones?", he said "That is right" (E. 63). When asked about another article which solicited legal funds and listed two unidentified numbers to call, he again said "One of the numbers is my wife's number."

Mr. Skolnik testified that it was a suit in equity for an injunction (E. 65). When asked if there was any other purpose in bringing the suit, he answered "Not that I know of" (E. 66).

Petitioners concealed the true purpose of the lawsuit, and collected funds by misrepresenting in the News Review that they were to be used for the purpose of enjoining "actions of developers which are contrary to the Greenbelt Master Plan" (E. 230). In another article published two weeks later, the News Review again misrepresented the purpose for which the funds were to be used, by describing it as "legal action to maintain the garden-city character

of Greenbelt and to help realize the City's Master Plan" (E. 68-69). The suit did not even mention the city's master plan.

Petitioners' brief alleges, p. 14, that there was no evidence that anyone on the News Review knew of the nature of the suit before it was filed. That was true of Mrs. Williamson, who wasn't told that the funds would be used to sue Mr. Bresler for damages in excess of a million dollars (E. 153). It was also true of Mrs. Sucher, who wouldn't have contributed if she had known one of her neighbors was also a defendant in the suit (E. 167). It is not true of petitioner Skolnik, who again misrepresented the nature of the suit in his sworn answers to interrogatories filed *after* the suit was filed, in which he stated (E. 70): "On information and belief, monies from said fund have been used in part at least to support an action by interested citizens based upon the covenants and the agreement between plaintiff, his wife and the City, i.e., Dennis, et al. versus Bresler, et al." Skolnik even concealed the names of other defendants, who were not parties to the covenants nor to any agreement with the city, and who had no financial interest in the property concerned. And, on the witness stand, he again misrepresented it to be a suit for injunction, and for no other purpose (E. 65-66).

It is also incredible that Mr. Stern and Mrs. Skolnik, who *were* on the News Review, and who initiated the lawsuit, and who were members of the Steering Committee of CFPG which collected and disbursed the funds for the lawsuit, didn't know the nature of the suit before it was filed.

Petitioner Skolnik further testified that he did not know of any other suits supported by the CFPG legal fund against other developers who were developing in Greenbelt contrary to the city's master plan (E. 80).

The Covenants Controversy

Petitioners describe the covenants controversy — which had no relation to the "blackmail", or "skulduggery" accusations, or the false reports of lawsuits — so as to picture respondent as one who violated his agreement with the city.

Respondent signed the covenants with the promise that the city "was going to get the same covenants from everybody" (E. 99-100). Petitioners' witness, Lewis Bernstein, the former City Planning Board Chairman and City Councilman, confirmed this when he acknowledged that respondent "Would be afforded no more or no less, no worse or no better treatment than any other developer in the City of Greenbelt" (E. 144). However, a few months after respondent signed the covenants limiting himself to an *average* of 7 units per acre for 50 acres, the city approved 12 units per acre for another developer, Lakeside North (E. 145). When he notified the city by registered mail that he intended to build a high-rise with 178 units, in addition to the 144 townhouses he had built as promised (and still less than the 350 total he had agreed to), and the city made no objection within 30 days as it was required to do by the covenants, he started construction.

The city filed suit to enjoin construction of the apartment house.[12] It did not attempt to enjoin the owner of Lakeside

---

[12] In that case, the city represented to the trial court and the Court of Appeals (City of Greenbelt v. Bresler, 248 Md. 210, 236 A. 2d 1) that it did not file suit until March 1966 because it did not learn that Bresler intended to build a high-rise apartment until they were informed on January 17, 1966. Petitioners' witness, Mayor Smith, repeated that statement in his testimony in this case (E. 123). As the Court of Appeals noted (E. 284), Mayor Smith admitted on cross-examination that the City Manager's report to the Mayor and Council dated October 22, 1965 (Pl. Ex. 34, E. 123-124) stated that Bresler intended to construct a "High Rise 183 units" and the city attorney had been requested to take action to enforce the covenants. Mayor Smith assumed that he received a copy of that report, as he normally does (E. 124).

North, who had agreed to build "townhouses, not garden apartments" (E. 141), but who "didn't keep his word either" (E. 142).

Petitioner Skolnik justified the News Review's failure to launch a corresponding attack on Lakeside North's higher density and breach of agreement on the ground that they were "in the periphery of town" (E. 37), although he admitted that Parcels 1 and 2 were also in the periphery (but adjacent to GHI property).

ARGUMENT

Out of Context

Petitioners' first and apparently principal argument in their brief alleges (p. 24): ". . . the lower court's total disregard for the context of the articles . . .". That argument is contrary to the record. The lower court clearly and explicitly instructed the jury (E. 189) that:

> "In considering the publication complained of, *you must consider the publication as a whole* — the Court would say in this case we are talking about serious (series) of publications — and determine the meaning of the publication and how it would be understood by ordinary readers from the *entire context* thereof with the other facts and circumstances shown by the evidence." (Emphasis supplied.)

Paradoxically, it was petitioners who took the word "blackmail" out of context in the first article and featured it as a caption in heavy type (E. 212).

Paradoxically, it was petitioners' reporter who took the word "blackmail" out of context in the second article and "selected out" that word (E. 152).

In *Dorr v. United States*, 195 U.S. 138, 153, the Court said: "And all sensational headings to reports should be avoided . . . These headlines were not privileged matter

at the common law, and were libelous remarks or comments if the matter could be deemed otherwise privileged . . .".

Petitioners cite 33 Am. Jur., Libel and Slander. That same authority, at Sec. 190, Headlines to Privileged Matter, states:

> "The headlines of an article, the publication of which is protected by a qualified privilege, may be libelous as exceeding that privilege. They are privileged only when they are a fair index of a truthful report . . .".

Likewise, 39 Am. Jur., Newspapers and Press Associations, Chapt. VII, Libelous Publications, Sec. 30, Reports of Public Proceedings, Meetings, etc., states:

> "Nor have newspapers and similar publications any special privilege in respect of comments on matters of public interest; on the contrary, it seems to be definitely settled that their rights in this regard are no greater than those of any private individual . . . one who desires to keep within the realm of privilege must not only make his report fair and true, but must also avoid the use of libelous headlines or captions."

Petitioner Skolnik and his witnesses knew that blackmail is a crime. All of them (with the exception of Mrs. Skolnik) testified that there was no relation between respondent's proposal and the crime of blackmail. The caption or subheading "Blackmail" was not a fair index of the matters being discussed, and was not privileged.[13]

Repetition of False Statements

Petitioners' brief asserts their right to publish ". . . an accurate report of such clear expressions of opinion re-

[13] When the trial court asked counsel for the petitioners if there was any contention of truth, he said (E. 186): "What I am saying is we don't contend that the plaintiff committed blackmail, that is all. We don't intend (contend) the plaintiff committed the crime of blackmail."

garding a public proposal that is fully and accurately described . . ." (p. 25).

Petitioners' insertion of the word "skulduggery" in the article written by Mrs. Williamson was neither accurate nor true. It was a knowingly false charge of dishonesty which was falsely attributed to the speaker (E. 152-153).

Petitioners' insertion of the caption "Blackmail" in the first article had nothing to do with any public proposal, and was not a report of an expression of anyone's opinion except the newspaper's. The allegedly public issue which was discussed was not whether respondent was guilty of blackmail (or skulduggery).

Prosser, The Law of Torts, 2nd Ed., states:

> "Thus qualified privilege does not extend, in any of the above cases, to the publication of irrelevant defamatory matter with no bearing upon the public or private interest which is entitled to protection; . . ." (Sec. 95, p. 625).
>
> "It must rather be directed and confined to the facts which are a matter of public concern, and not go beyond them, as by attacking the personal character of the author of a book . . ." (Sec. 95, p. 623).

Likewise, the false reports of lawsuits and "legal proceedings" allegedly filed against respondent (E. 223, 227) had no relation to any public proposal, or public issue, or matter of public interest (nor to any official conduct).

Public Officials and Public Figures

Although *Curtis Publishing Co. v. Butts,* and its companion case, *Associated Press v. Walker,*[14] 388 U.S. 130

[14] The firm of Royall, Koegel, Rogers & Wells was of counsel for petitioners in this case when it was before the trial court and the Maryland Court of Appeals. William P. Rogers, a member of the firm at the time, represented the Associated Press in the companion case to *Butts.*

(1967), 87 S. Ct. 1975, was decided almost six months before this case was tried; and although counsel for respondent admitted in his opening statement that respondent was a public figure;[15] and although the Maryland Rules provide that amendments may be made orally in open court, at any time before the jury retires to make up its verdict, and that leave to amend shall be freely granted (Md. Rule 329, c, d) — petitioners never asked for leave to add the constitutional defense of "public figure" to their constitutional defense of "public official" (E. 6).[16]

It will also be noted that petitioners did not cite *Curtis Publishing Co. v. Butts, supra,* in their requests for instructions on the question of "actual malice" (E. 8-9). The *only* cases they cited in support of those requests were *New York Times v. Sullivan,* 376 U.S. 254; *Rosenblatt v. Baer,* 383 U.S. 75; *Garrison v. Louisiana,* 379 U.S. 64; and *Beckley Newspapers v. Hanks,* 389 U.S. 81. Those cases all dealt with actions against critics of the *official* conduct of public officials.

It was petitioners' citation of cases dealing *only* with criticism of official conduct, and their erroneous insistence that the *New York Times* rule applied in all its rigor to *all* libel cases, that lead to the following colloquy (E. 201):

> "(The Court) You object to—
>
> (Mr. Clark) Yes. That statement does not make it clear to the jury that under the constitution actual malice is *limited* to knowledge of the truth or reckless disregard of the truth.

---

[15] The trial court twice instructed the jury that ". . . opening statements or closing argument of counsel is not evidence" (E. 198-199).

[16] In *Butts,* the Court said: "Before we reach the constitutional arguments put forward by the respective petitioners, we must first determine whether Curtis has waived its right to assert such arguments by failing to assert them before trial." 388 U.S. at 142, 87 S. Ct. at 1985.

(The Court) In other words, what you are saying to me is knowledge of it being false and reckless disregard of whether it is true or false by the — are the elements of malice.

(Mr. Clark) The *only* evidence (elements) of malice." (Emphasis supplied.)

The trial court did not agree with that contention. Neither did the majority opinion of Mr. Justice Harlan in *Butts*, which said that:

"... to take the rule found appropriate in *New York Times* ... as being applicable throughout the realm of the broader constitutional interest, would be to attribute to this aspect of *New York Times* an unintended inexorability at the threshold of this new constitutional development. In *Time, Inc. v. Hill*, supra, 385 U.S. at 390, 87 S. Ct., at 543 we counseled against 'blind application of *New York Times Co. v. Sullivan*' and considered 'the factors which arise in the particular context.'" 388 U.S. at 148, 87 S. Ct. at 1988.

In *New York Times*, the Court repeatedly stated that the rule of constitutional protection announced in that case applied to actions brought by public officials against critics of their *official* conduct. 376 U.S. at 256, 264, 268, 273, 279, 282, 283; 84 S. Ct. at 713, 717, 719, 722, 725, 726, 727.

In *Butts*, Mr. Justice Harlan noted that (388 U.S. at 133, 87 S. Ct. at 1980):

"The sweep of the *New York Times* rule in libel actions brought under state law was a question expressly reserved in that case, 376 U.S. at 283, n. 23, 84 S. Ct., at 727, and while that question has been involved in later cases, Garrison v. State of Louisiana, 379 U.S. 64, 85 S. Ct. 209, 13 L. Ed. 2d 125; Rosenblatt v. Baer, 383 U.S. 75, 86 S. Ct. 669, 15 L. Ed. 2d 597; Time, Inc. v. Hill, 385 U.S. 374, 87 S. Ct. 534, 17 L. Ed. 2d 456, it has not been fully settled."

If, as they indicated, petitioners were relying *only* on the *New York Times* rule as announced in that case and the other cases cited by them, their objection was improper, as none of the publications were directed at the official conduct of respondent. And, some of the articles clearly showed that they were directed at the private conduct of respondent, which the concurring opinion of Mr. Justice Goldberg in *New York Times* stated was not constitutionally protected. 376 U.S. at 301, 84 S. Ct. at 737.

On the other hand, if petitioners were also relying on the "public figure" constitutional defense, their objection likewise was not well taken. The majority opinion of Mr. Justice Harlan in *Butts* made it abundantly clear that actual malice in the case of public figures is not limited to knowledge of falsity or reckless disregard of truth, nor are they the only elements of malice. As the opinion stated:

> "... the rigorous federal requirements of *New York Times* are not the only appropriate accommodation of the conflicting interests at stake. We consider and would hold that a "public figure" who is not a public official may also recover damages for a defamatory falsehood whose substance makes substantial danger to reputation apparent on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers." 388 U.S. at 155, 87 S. Ct. at 1991.

However, the question of "public figure" is largely academic in this case, as petitioners elected not to rely on *Butts* in requesting instructions on actual malice, and to reject the "highly unreasonable conduct" criterion of *Butts*.

And, if petitioners were relying on "public interest" as a constitutional defense, it did not extend to false accusations of lawsuits, nor to alleged private violations of county building standards, nor to captions and other accusations of

crime which were not relevant to the matters being discussed, nor to respondents' own accusation of "skulduggery".

Actual Malice

Petitioners claim the trial court erred in describing to the jury what is said was a *definition* of malice (E. 192-193). However, its final instruction to the jury (E. 209) clearly stated:

> "I am going to give you the additional instruction, *which is the law on this subject.* There is no contention here that the statements regarding blackmail were true. The Constitutional guarantee requires a rule that prohibits a public official or public figure from recovering damages for defamatory falsehood relating to his official conduct unless he proves that the statements were made with actual malice, that is with knowledge that it was false or with reckless disregard of whether it was false or not. The same thing is said in the same vein, *definition of malice is constitutionally insufficient* where discussion of public affairs is concerned unless the plaintiff establishes that the utterances were false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false."

This charge was clear and explicit, and in the exact language of *New York Times* on public official, public figure, and public affairs. It was broader than petitioners were entitled to under the circumstances of the case. And, it was given special emphasis as an additional instruction and the last one which the jury heard before it retired to consider its verdict.

Despite the fact that the trial court had stressed to the jury that its final instruction was "the law on this subject", and that the *definitions* of malice which it had previously discussed with the jury were "constitutionally insufficient

where discussion of public affairs is concerned" (E. 209), petitioners objected to previous references allegedly made to "evil motive", "ill will", and "hostility", (E. 210). The trial court did not use the words "evil motive" in its instructions. Nor did it use the words "ill will" (which presumably would include "hostility"), which *were* used by the Court in *Butts*, when it said:

> "Moreover, punitive damages require a finding of 'ill will' under general libel law and it is not unjust that a publisher be forced to pay for the 'venting of his spleen' in a manner which does not meet even the minimum standards required for constitutional protection." 388 U.S. at 161, 87 S. Ct. at 1994.

The Brief for Petitioners alleges a *single* error in the instructions given by the trial court, described as (p. 3):

> (a) By instructing the jury that "actual malice" which would permit recovery consists of "a state of mind . . . best described as spite, hostility, or deliberate intention to harm" that could be inferred from the language of the publications in issue:

The opinion of Mr. Justice Brennan in *New York Times* also referred to ". . . the state of mind required for actual malice . . ." 376 U.S. at 287, 84 S. Ct. 730. That is what the trial court apparently intended to convey to the jury when it preceded the allegedly erroneous *definition* of actual malice with the statement: "Therefore, the court will now again *define* for you another indication of what malice is", and followed it with a paraphrase of Mr. Justice Brennan's opinion: "By these *definitions* you can easily see that actual malice does involve a state of mind" (E. 193) (emphasis supplied).

This Court has not changed the *definition* of "malice" or "actual malice". What it said in *Rosenblatt v. Baer, supra*, was that "(This) definition of malice is constitutionally in-

sufficient where discussion of public affairs is concerned . . ." 383 U.S. at 84, 86 S. Ct. at 675. That is the exact phrase which the trial court used in its final instruction to the jury (E. 209), and which it followed with the exact language of the *New York Times* rule.

Presumably, state law standards of libel have not been nullified by this Court when they do not encroach on the constitutional protections announced by this Court pertaining to criticism of public officials, or official conduct, or public figures, or public issues, or public affairs. As the Court of Appeals noted, there were other publications unrelated to public matters which were ". . . injurious to Mr. Bresler in his business as a contractor and were libelous per se" (E. 294). Likewise, as that Court pointed out, the protection does not extend to the publication or repetition of defamatory matter which is irrelevant to the public issues being discussed.

Instructions as a Whole

Petitioners' primary argument is that the word "blackmail" was taken out of context. The same complaint might be made of petitioners. Their single assignment of error, allegedly made by the trial court in the instructions it gave, apply to definitions by that court which they have taken out of context.

In *Butts*, Mr. Justice Harlan stated:

> "The impact of a jury instruction 'is not to be ascertained by merely considering isolated statements, but by taking into view all the instructions given and the tendencies of the proof in the case to which they could possibly be applied.' Seaboard Air Line R. v. Padgett, 236 U.S. 668, 672, 35 S. Ct. 481, 482, 59 L. Ed. 777." 388 U.S. at 156, 87 S. Ct. at 1992.

As the Court of Appeals noted, the trial court instructed the jury a number of times (eight — E. 191, 191-192, 192,

192, 193, 197, 204 and 209) substantially in the language of the *New York Times* test. As that Court said (E. 316):

> "Indeed in several instances the test was broader than that of *New York Times* as it was not always limited to a 'public official' or a 'public figure'.[17] This however, was favorable to the defendants and injurious, if at all to the plaintiff, and, as we have stated, the appellants cannot complain of this."

In addition, the trial court gave the jury numerous instructions on the right of the press to comment upon and criticize matters of public interest freely and openly; to rely upon people it knows or has very good reason to believe are responsible citizens; immunity with respect to foolish and prejudicial criticism; fair comment; privilege; preponderance of evidence; and burden of proof.

The trial court attempted in good faith to instruct the jury fairly and thoroughly. It had read carefully all the Supreme Court cases cited by respondents in their requests for instructions (and *Butts*, which they had not cited), had conducted an extensive discussion of its proposed instructions with counsel in chambers, and attempted with manifest justice to apply the law to the evidence in this case. Its repeated instructions in the substantial language of *New*

---

[17] The Court of Appeals expressed grave doubts that Bresler was a "public official" or even a "public figure". As that court noted (E. 296), respondent was not a "public official" of Prince George's County, but was a member of the House of Delegates from Montgomery County, and substantially all the libels were published some *seven months before* he was asked to run for Comptroller. In *Rosenblatt v. Baer*, 383 U.S. at 85, 86 S. Ct. at 675-676, the opinion of Mr. Justice Brennan stated that the public official designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs. (Mr. Justice Brennan also noted that: "Since *New York Times* had not been decided when his case went to trial, his presentation was not shaped to the 'public official' issue". 383 U.S. at 87, 86 S. Ct. at 676).

York Times, can only, if at all, be criticized because the court reporter designated the trial court's pauses with a comma instead of a dash, e.g.:

> (E. 192) — "You are instructed the publication is qualified privileged and your verdict should be for the defendant unless you find again the publication was with actual malice, knowledge of its being false or reckless disregard of whether it was true or false."
>
> (E. 197) — "With the law that I have given you you are obligated to find malice, knowledge of the falsity, reckless disregard of what is true or false in order to find (for) the plaintiff."
>
> (E. 204) — "And the plaintiff cannot recover unless you find, as I say again, by a preponderance of the evidence, that the articles were published with actual malice, knowledge of their being false, or reckless disregard of whether they were true or not."

It will be noted that the trial court, contrary to petitioners' contention, did not say actual malice *or* knowledge of falsity *or* reckless disregard of truth in the above instructions, but used the word "or" only between knowledge of falsity and reckless disregard of truth, pursuant to the phraseology of *New York Times*.

Despite its undue repetition of the *New York Times* instruction, and its attendant unfairness to respondent under the facts in this case, the trial court gave another and final instruction to the jury (E. 209), in which it *twice more* repeated the *New York Times* instruction in the precise language used by the Court in that case.

As the Court of Appeals said (E. 305): "In the present case, the trial court gave a comprehensive and carefully considered charge to the jury." And, as it further said (E. 318): "In our opinion, the appellants suffered no prejudice from the instruction, considered as a whole, in this regard.

If there was any prejudice, it was suffered by the plaintiff, not by the defendants."

It is noteworthy that (all former) Chief Justice Warren and Justice Clark joined in the dissenting opinion of Justice Fortas in *Time, Inc. v. Hill*, in which he said: "But a jury instruction is not abracadabra. It is not a magical incantation, the slightest deviation from which will break the spell. Only its poorer examples are formalistic codes recited by a trial judge to please appellate masters . . . The English language is not so esoteric as to permit serious consequences to turn upon a supposed difference between the instructions to the jury and this Court's formulation." 385 U.S. at 418, 420, 87 S. Ct. at 557, 558.

Opportunity to Rebut

One of the principal reasons former Chief Justice Warren gave for adhering to the *New York Times* standard in the case of "public figures", in his concurring opinion in *Butts*, was because: "And surely as a class these 'public figures' have as ready access as 'public officials' to mass media of communication, both to influence policy and to counter criticism of their views and activities." 388 U.S. at 164, 87 S. Ct. at 1996.

The Greenbelt News Review is the only newspaper published in Greenbelt. It is the only newspaper published in the metropolitan area which is regularly distributed to every house in Greenbelt. None of the other newspapers distributed in Greenbelt had published any of the accusations made in the News Review concerning respondent. And, as the Court of Appeals stated (E. 299):

> "Nor was it likely that *Bresler, himself*, would have access to the News Review to present his position in the matter and show that he had not committed blackmail, was not guilty of skulduggery or had not been sued for failure to carry out the county building requirements,

in view of the refusal of the News Review to permit him to subscribe to it, even though it did mail some 75 copies of the publication to others at a nominal charge."

In *Time, Inc. v. Hill,* the opinion of Mr. Justice Brennan stated:

> "Were this a libel action, the distinction which has been suggested between the relative opportunities of the public official and the private individual to rebut defamatory charges might be germane. And the additional state interest in the protection of the individual against damage to his reputation would be involved Cf. Rosenblatt v. Baer, 383 U.S. 75, 91, 86 S. Ct. 669, 679, 15 L. Ed. 2d 724 (Stewart, J., concurring)."[18] 385 U.S. at 391, 87 S. Ct. at 543-544.

Comparison with New York Times and Butts

The Court's warning against "blind application of *New York Times Co. v. Sullivan*" in *Time, Inc.* and *Butts* is appropriate because of a number of substantial differences between *New York Times* and this case, e.g.:

1. *New York Times* involved a single publication.

2. *New York Times* involved criticism of the official conduct of a public official.

3. In *New York Times* the Court commented on ". . . Times' policy of rejecting advertisements containing 'attacks of a personal character' . . ." 376 U.S. at 287 n. 27, 84 S. Ct. at 730.

---

[18] Mr. Justice Stewart commented that: "Surely if the 1950's taught us anything, they taught us that the poisonous atmosphere of the easy lie can infect and degrade a whole society." 383 U.S. at 94, 86 S. Ct. at 680. That reference to the 1950's was particularly appropriate to this case. Not only did the News Review spread panic and hatred among Greenbelt's residents; "guilt by association" was revived when others beside Bresler were named as co-defendants and falsely charged with fraud in the lawsuit promoted by the News Review.

4. In *New York Times* the Court said "There was no reference to respondent in the advertisement, either by name or official position." 376 U.S. at 288, 84 S. Ct. at 730.

5. In *New York Times* the Court noted that, of the Times total circulation that day of approximately 650,000 copies, only about 35 copies were distributed in Montgomery County, Alabama. 376 U.S. at 260 n. 3, 84 S. Ct. at 715.

6. In *New York Times* there appeared to be no accusation that Commissioner Sullivan had committed any crime.

7. In *New York Times* there was no evidence of malice at the time of publication, and the Court said respondent's own proofs tend to show that the advertisement was substantially correct. 376 U.S. at 286, 84 S. Ct. at 729.

8. The New York Times was a daily newspaper.

There are also substantial difference between *Butts* and this case, e.g.:

1. *Butts* involved a single publication.

2. In *Butts* there was no accusation that he had committed a crime.

3. In *Butts* there was a defense of "substantial truth". 388 U.S. at 137, 87 S. Ct. at 1982. (As the Court of Appeals noted in this case, petitioners did not object to the trial court's instruction to the jury (E. 319-320) that: "Going to the factor of the truth, there is no contention in this case, it is conceded by the defendant these allegations were not true. That is that Mr. Bresler was guilty of blackmail.")

4. In *Butts*, the Court noted that: "He (counsel for Butts) did not seriously contend that the Saturday Evening Post was actuated by pre-existing animosity toward Butts." 388 U.S. at 156 n. 20, 87 S. Ct. at 1992.

5. In *Butts,* the Court stated that : . . . both (Butts and Walker) commanded sufficient continuing public interest and had sufficient access to the means of counter-argument to be able 'to expose through discussion the falsehood and fallacies' of the defamatory statements." 388 U.S. at 155, 87 S. Ct. at 1991.

6. In *Butts,* the Court noted that: "Nor does anything we have said touch, in any way, libel or other tort actions not involving public figures or matters of public interest." 388 U.S. at 155 n. 19, 87 S. Ct. at 1992. (The Court of Appeals held that several of the allegations were libels *per se* on respondent in his business as a contractor.)[19]

The Court of Appeals Decision

Not only was the decision of the Court of Appeals a unanimous one (E. 265), it was an extensive opinion which showed that the appellate court had likewise given careful and thorough consideration to the decisions of this Court. In turn, its discussion of the evidence (E. 265-288) and the errors alleged by petitioners (E. 288-320) deserve the careful consideration of this Court.

With reference to petitioners' contention that the word "blackmail" was used in a non-criminal sense, the court said that the intended meaning was for the jury to determine, and that the jury had been instructed to determine the meaning from the entire context of the publications.

The court noted that, as early as 1883, the Court of Appeals of Maryland, in *Negley v. Farrow,* 60 Md. 158, had

---

[19] As the Court of Appeals noted (E. 295), the rule on libels pertaining to those engaged in business was specifically applied to contractors in other jurisdictions; *Plenol, v. Beuttler,* 253 Iowa 259, 111 N.W. 2d 669 (1961); *Schneidman Heating, Inc. v. New York Plumbers' Specialities Co.,* 238 App. Div. 318, 264 N.Y.S. 146 (1933); *Williams v. Daily Review, Inc.,* 236 Cal. App. 2d 405, 46 Cal. Rptr. 135 (1965).

recognized "the right of the defendants to discuss and criticize boldly and fearlessly the official conduct of the plaintiff." However, it said that respondent was not a "public official" of Prince George's County, but a member of the Maryland House of Delegates from Montgomery County; that substantially all of the libels were published some *seven months before* he was asked to run for Comptroller of Maryland; that the articles were directed at respondent as a *private developer* of land in the Greenbelt area; and that there was no suggestion that he had any political or other prominence at the national, state, county or municipal level. Nevertheless, the Court of Appeals assumed *arguendo* that respondent was a public official and a public figure within the meaning of *New York Times, Butts,* etc., and said that the instructions given had met those constitutional tests.

The decision said that the original use of the term "blackmail" was intended to import serious criminal conduct on respondent's part, and there was evidence from which the jury could and did find that this charge was false, and known to be false, but was published with actual knowledge of its falsity or with reckless disregard of whether it was true or false. As the court said, it would be difficult to conceive of a case in which there was more convincing evidence — the admissions of one of the petitioners and several of their witnesses — that the petitioners did indeed have actual knowledge of the falsity of the charge or, in any event, entertained serious doubts of its truth.

The Court of Appeals also said there were sufficient facts to indicate to the jury a desire on the part of the publishers of the News Review to injure respondent's reputation through the use of false charges.

The appellate court reviewed the trial court's instructions in detail, and found that the entire charge clearly in-

structed the jury that, in order for respondent to recover, it must find by a preponderance of the evidence that the *New York Times* test had been established for *both* Bresler's activities as a public official and as a public figure, and that this was a *more favorable* instruction than petitioners were entitled to receive in light of the factual circumstances. It said that the trial court adopted, in effect, the position of former Chief Justice Warren in *Butts* and *Walker* with reference to "public figures". It further said that, considering the instruction as a whole, if there was any prejudice, it was suffered by respondent, not petitioners.

In conclusion, the appellate court said that the subheading "Blackmail" was not used as an expression of opinion by any one other than the publishers themselves, that they knew it was false but emphasized the charged in a subheading, and that the jury could well have found that the charge was published with a reckless disregard of truth.

Petitioners' Appendix A

Petitioners reprinted several newspaper articles and editorials in Appendix A to their brief (A. 1-11), in support of their apparent contention that accusations of "blackmail" are not libelous because they are frequently made. All the articles quoted differ substantially from the facts in this case. Five of them criticize the *official* conduct of U.S. Representatives and a U.S. Senator, and none of the remainder accuse any individual by name.

Petitioners cite no authorities in support of the premise that conduct frequently engaged in by others renders it legally permissible.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

ABRAHAM CHASANOW,
151 Centerway,
Greenbelt, Maryland 20770,
Attorney for Respondent.

HOWARD S. CHASANOW,
Of Counsel.

December 31, 1969.

FILE COPY

JAN 19 1970

JOHN F. DAVIS, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners

v.

CHARLES S. BRESLER,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

REPLY BRIEF FOR PETITIONERS

ROGER A. CLARK
1730 K Street, N.W.
Washington, D.C. 20006
Attorney for Petitioners

Washington, D. C. · THIEL PRESS · 202 · 393-0625

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners

v.

CHARLES S. BRESLER,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

REPLY BRIEF FOR PETITIONERS

I

In a telling acknowledgment of the complete lack of substance to the central holding below that petitioners knowingly charged him with the crime of blackmail, Bresler's brief (pp. 3-8) attempts to shift the focus of the case to other articles which, with one exception discussed

in the next paragraph, were not in issue or received little or no attention at the trial.[1]

Thus, Bresler claims that there was "a series of libelous attacks" (p. 3), that "[s]everal of the 45 exhibits placed in evidence were knowingly false reports of lawsuits. . . which pertained solely to his *private* activities as a builder" (p. 4), and that there were "numerous other publications which were intended. . . to injure him in his business". (pp. 7-8) The only article in issue cited in support of these assertions, which received any attention at the trial, was the article of June 9, 1966 relating to Bresler's candidacy for State Comptroller (Pl. Ex. 6, E. 222-3, Tr. 40). The statement in issue in that article—that a number of homeowners in the community had started legal proceedings against Bresler for failure to make construction corrections in their homes—directly related to his qualifications as a candidate for Comptroller.[2] The background and import of this statement—and the clear insufficiency of the evidence with

---

[1] The Court of Appeals clearly focused on the "two principal articles which used the word 'blackmail' . . . . [as forming] the principal basis for the libel action." (E. 266, 269) Bresler also attempts to shift the focus within one of these articles from "blackmail" to "skulduggery" which was a fair and accurate condensation of criticism voiced at the City Council meeting concerning official action taken by the School Board in postponing its condemnation action against respondent (E. 42-3, 152-3, 162-3). Bresler's main contention (pp. 9-10) seems to be that this word is actionable, regardless of its undisputed accuracy as a condensation, simply because it was inserted during the editing process. There was no showing at the trial that this portion of the article was false, that it even referred to Bresler, or that petitioners entertained any doubt as to its accuracy at the time of publication.

[2] As stated in *Garrison v. State of Louisiana*, 379 U.S. 64, 77 (1964), "anything which might touch on an official's fitness for office is relevant." *Accord, Goldwater v. Ginzburg*, 414 F.2d 324, 335 (2d Cir. 1969), *petition for cert.* filed Oct. 2, 1969, No. 687.

respect thereto to establish actual malice under the constitutional standard—is fully discussed in petitioners' brief, pp. 9-10, 28-31.[3]

The only other publications in issue cited in Bresler's brief (pp. 3-8) to support the assertion that there was a "series of libelous attacks" are three letters to the editor expressing critical opinions of his public dealings with city and county officials regarding such clear public issues as the high school site and the covenants. No attempt was made to show that these letters were in any way false. Indeed, the two strongest letters—entitled "An Unethical Trade" and "Another Crippling Blow" (Pl. Ex. 1, E. 214-5, Tr. 39; Pl. Ex. 3, E. 220, Tr. 40)—were not even mentioned at the trial. The third letter was given only perfunctory attention (E. 48-9).

II

Bresler's heavy reliance (pp. 10-2) upon the News Review's publication—eight months after the articles in which the word "blackmail" appeared—of two short press releases concerning the CFPG legal fund highlights the extent to which distant and unrelated conduct of petitioners was relied upon below as establishing actual malice.[4] Moreover, Bresler misreads Justice Harlan's opinion in *Butts* in suggesting (pp. 17-9) that it would allow recovery based on such

---

[3]Bresler also attempts (p. 7) to shift the focus within this article to another statement which was not even alleged to be libelous in the declaration. Bresler's assertion in this connection that Mr. Skolnik knew that an earlier suit by the City against one of Bresler's corporations had been dismissed is a gross distortion of the record (E. 57-8).

[4]Not only do these two short articles fail to establish News Review "sponsorship" of the citizens' lawsuit against Bresler, but, as pointed out in petitioners' brief (pp. 13-4), the claim that they "misrepresented" the purpose of the fund drive is patently without merit.

evidence. The constitutional standard for recovery by public figures advocated by Justice Harlan, like the *New York Times* rule adopted by the majority, focuses on the conduct of the defendant *in publishing the articles in issue.* It clearly would not permit recovery by a public figure on the basis that a newspaper had opposed his actions with respect to public issues on other occasions.

III

Bresler argues (pp. 14-5) that petitioners "took the word 'blackmail' out of context in the first article and featured it as a caption in heavy type." This caption was merely one of a series of sub-heads in the article designed to break up the long columns of type by accurately describing the substance of what immediately followed (Ex. 1, E. 211-2, Tr. 39; E. 158). Moreover, it in no way over-emphasized the extent to which the word "blackmail" was used or distorted the tenor of the public reaction at the meeting to Bresler's zoning proposal. As stated by the reporter: "[t]he people were really mad and that word 'blackmail' was not used once or twice like in my story, but over and over and over again."[5] (E. 166)

IV

Bresler's claims (pp. 16-7) that petitioners failed to raise a separate public figure defense or to request a proper instruction thereon were not raised in the trial court and were ignored by the Court of Appeals. They are without merit. In anticipation of the decisions of this Court in *Butts* and *Walker*, petitioners' constitutional defense clearly referred to Bresler's status both as a public official and as "an

---

[5] As stated by the Mayor: "Certainly nothing in here that reports the meeting any different from the way it happened." (E. 121)

active participant in matters of pressing public concern to which the publications complained of were directed".[6] (E.6) On the basis of this defense, petitioners requested instructions that the articles were actionable only upon a showing of knowing falsity or recklessness under the *New York Times* standard (E. 8-9). After these requests were rejected, petitioners repeatedly attempted to get a correct statement of the public figure aspect of the constitutional protection (E. 206, 208).

V

Bresler attempts (pp. 23-4) to gloss over the fact that seven out of eight instructions incorrectly stated the *New York Times* rule as to actual malice on the basis that "the court reporter designated the trial court's pauses with a comma instead of a dash." As clearly shown in its colloquy with counsel set forth in petitioners' brief at pp. 16-7, however, the trial court's pauses, and its omission of the words "that is" after the word malice, were intended to convey to the jury its view of the law that actual malice, which it defined as "spite, hostility or deliberate intention to harm," was separate and distinct from knowing falsity or reckless disregard of the truth. The cumulative impact of these and the other clearly erroneous instructions on actual malice was hardly cured by the perfunctory instruction which the court finally gave on the *New York Times* rule.

VI

Finally, Bresler argues (pp. 25-6) that he did not have an opportunity to rebut the criticism of him in the News Review. The fact is that Bresler did not even complain to the News Review regarding the articles in which the word "blackmail" appeared until he filed this suit some nine months later (E. 156, 162) when the News Review's accurate criti-

[6] Bresler's concession in his opening statement (E. 19) that he was a public figure demonstrated that he understood at the trial that the public figure aspect of the constitutional defense was in issue.

cism with respect to the covenants threatened his campaign for Comptroller. Thus, quite apart from Bresler's obvious access to other media as an important political figure and major land developer whose business activities alone commanded feature coverage in The Washington Post, there is no evidence that he was ever denied access to the News Review itself.[7]

Respectfully submitted,

Roger A. Clark
1730 K Street, N. W.
Washington, D. C. 20006
Attorney for Petitioners

[7] As shown in the report of the second city council meeting (Pl. Ex. 2, E. 216, Tr. 39) and by the article cited on p. 4 of Bresler's brief, the News Review did not hesitate to print criticism of itself. The paper also had a liberal policy on printing letters to the editor (E. 159-60) and on at least two occasions it affirmatively sought out Bresler to obtain his views (E. 23-4, 74).

FILE COPY

FEB 10 1970

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners,

v.

CHARLES S. BRESLER,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

REPLY BRIEF FOR RESPONDENT

ABRAHAM CHASANOW,
151 Centerway,
Greenbelt, Maryland 20770,
Attorney for Respondent.

HOWARD S. CHASANOW,
Of Counsel.

The Daily Record Co., Baltimore, Md. 21203

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 413

GREENBELT COOPERATIVE PUBLISHING ASSOCIATION, INC., and ALFRED M. SKOLNIK,

Petitioners,

v.

CHARLES S. BRESLER,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

REPLY BRIEF FOR RESPONDENT

The Reply Brief for Petitioners (p. 3, n. 3) charges respondent with a "gross distortion of the record".

Not only is this charge a serious one, but it relates directly to the important issue of "knowledge of falsity".

Because the answer to that charge is contained in the typewritten transcript of testimony and not in the printed record, respondent deems it necessary to file this reply brief in order that the evidence on this issue may be readily available to the entire Court.

The issue arises out of the News Review article, written by Mr. and Mrs. Skolnik, published on June 9, *1966* (P. Ex. 6; T. 40; E. 222-223), which said, in partinent part: *"Bresler* is *currently* faced with a series of legal actions instituted by the City of Greenbelt", and listed three suits, including the one in issue, which was described as; "The city also resorted to legal action early in the construction of Boxwood Village because drainage problems in the development caused damages in the Lakewood subdivision." (Emphasis supplied.)

Respondent's brief (p. 7) asserted that Skolnik published the article with knowledge that it was false on several counts, particularly: (1) that the suit was not against Bresler; (2) that the defendant, Ivy Homes, Inc., in which Bresler had no interest, had previously consented to a judgment against it; and (3) that the suit had been dismissed as to Boxwood Village, Inc. (in which Bresler had only a one-sixth interest) more than a year earlier. Petitioners' Reply Brief did not dispute the first two assertions, but labeled the assertion as to Skolnik's prior knowledge of the dismissal of suit a "gross distortion of the record".

The direct answer to the charge of gross distortion is contained on pages 264 and 265 of the transcript:

> "Q. Mr. Skolnik, I show you Plaintiff's Exhibit No. 27, the Greenbelt News Review dated Thursday, July 15, 1965.[1]
>
> * * * * * * *
>
> Q. Would you read the paragraph marked in red, specifically the fourth paragraph of the article? A. 'In the meantime, the City was plagued by another

[1] Petitioners referred to the same article in their "Motion for Judgment N.O.V. or For New Trial", par. 5 D (E. 12), in which they stated: "Moreover, a later front-page article on July 15, 1965, made clear that the order ran only against Ivy Homes, Inc., the other company involved in the suit."

drainage problem on Empire Place on the Lakewood development. The rain of last week washed away most of the fill that the developer, *Stanley Schultz of Ivy Homes, Inc., had provided on Court Order.* The Circuit Court had issued a 30-day order to Schultz to regrade and reverse the slope and seed it. According to City officials, the work performed was of questionable quality, and the rain proved thusly.

'The Council directed its solicitor to prepare the necessary legal papers to bring the matter before the Court again. After each rain the City has been cleaning up the debris left on the street and is seeking compensation from the developer.'

Q. Now isn't that the same lawsuit we talked about yesterday, Mr. Skolnik, which you had featured as a suit against Mr. Bresler, which actually turned out to be a claim against Ivy Homes, Inc. with which Mr. Bresler has no relation? Isn't it a fact that by the time of this article the Court had found that Ivy Homes, not Mr. Bresler, or any of his associates or any corporate (corporations) that were affiliated with it, that Ivy Homes had solely, was responsible and *had dismissed the case* against Boxwood homes and had ordered Ivy Homes to immediately remedy this condition isn't this a fact?

A. I don't know that it is a fact.

Q. *You knew about the dismissal?*

A. *I knew about it.*" (Emphasis supplied).

Respectfully submitted,

ABRAHAM CHASANOW,
Attorney for Respondent.

HOWARD S. CHASANOW,
Of Counsel.

February 9, 1970.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 413.—October Term, 1969

Greenbelt Cooperative Publishing Association, Inc., et al., Petitioners, v. Charles S. Bresler. | On Writ of Certiorari to the Court of Appeals of Maryland.

[May 18, 1970]

Mr. Justice Stewart delivered the opinion of the Court.

The petitioners are the publishers of a small weekly newspaper, the Greenbelt News Review, in the City of Greenbelt, Maryland. The respondent Bresler is a prominent local real estate developer and builder in Greenbelt, and was, during the period in question, a member of the Maryland House of Delegates from a neighboring district. In the autumn of 1965 Bresler was engaged in negotiations with the Greenbelt City Council to obtain certain zoning variances that would allow the construction of high density housing on land owned by him. At the same time the city was attempting to acquire another tract of land owned by Bresler for the construction of a new high school. Extensive litigation concerning compensation for the school site seemed imminent, unless there should be an agreement on its price between Bresler and the city authorities, and the concurrent negotiations obviously provided both parties considerable bargaining leverage.

These joint negotiations evoked substantial local controversy, and several tumultuous city council meetings were held at which many members of the community freely expressed their views. The meetings were re-

The judge then defined "malice" to include "spite, hostility, or deliberate intention to harm." Moreover, he instructed the jury that "malice" could be found from the "language" of the publication itself.[3] Thus the jury was permitted to find liability merely on the basis of a combination of falsehood and general hostility.

This was error of constitutional magnitude, as our decisions have made clear. "This definition of malice is constitutionally insufficient where discussion of public affairs is concerned; '[w]e held in *New York Times* that a public official might be allowed the civil remedy only if he establishes that the utterance was false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true.'" *Rosenblatt* v. *Baer*, *supra*, at 84. "[E]ven where the utterance is false, the great principles of the Constitution which secure freedom of expression in this area preclude at-

---

immunity even with respect to the publication of foolish and prejudicial criticism if they are not published with malice, knowledge of their not being true, it is knowledge they are false, or reckless disregard of whether they are true or false.

. . . . .

"[Y]our verdict should be for the defendant unless you find that the publication was made with actual malice, knowledge of its falsity, or reckless disregard of whether it was true or false.

. . . . .

". . . [Y]our verdict should be for the defendant unless you find again the publication was with actual malice, knowledge of its being false or reckless disregard of whether it was true or false."

[3] The trial judge said:

"With respect to your consideration of presence of actual malice on the part of defendant, you may infer its presence from the language or circumstances of the publication, but this may be done only if the character of the publication is so excessive, intemperate, unreasonable and abusive as to defy any other reasonable conclusion than that the defendant was moved by actual malice toward the plaintiff."

taching adverse consequences to any except the knowing or reckless falsehood. Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred . . . ." *Garrison* v. *Louisiana*, 379 U. S. 64, 73. See also *Beckley Newspapers Corp.* v. *Hanks*, 389 U. S. 81, 82. And the constitutional prohibition in this respect is no different whether the plaintiff be considered a "public official" or a public figure." *Curtis Publishing Co.* v. *Butts*, *supra*.

The erroneous instructions to the jury would, therefore, alone be enough to require the reversal of the judgment before us. For when "it is impossible to know, in view of the general verdict returned" whether the jury imposed liability on a permissible or an impermissible ground, "the judgment must be reversed and the case remanded." *New York Times Co.* v. *Sullivan*, *supra*, at 284. See *Time, Inc.* v. *Hill*, *supra*, at 394–397, *Rosenblatt* v. *Baer*, *supra*, at 82; *Stromberg* v. *California*, 283 U. S. 359, 367–368.

This, however, does not end the inquiry. As we noted in *New York Times*, "[t]his Court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. . . . We must 'make an independent examination of the whole record,' . . . so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression." 376 U. S., at 285.

This case involves newspaper reports of public meetings of the citizens of a community concerned with matters of local governmental interest and importance. The very subject matter of the news reports, therefore, is one of particular First Amendment concern. "The maintenance of the opportunity for free political

discussion to the end that government may be reponsive to the will of the people and that changes may be obtained by lawful means . . . is a fundamental principle of our constitutional system." *Stromberg* v. *California, supra,* at 369. "Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." *Thornhill* v. *Alabama,* 310 U. S. 88, 102.[4] Because the threat or actual imposition of pecuniary liability for alleged defamation may impair the unfettered exercise of these First Amendment freedoms, the Constitution imposes stringent limitations upon the permissible scope of such liability.[5]

It is not disputed that the articles published in the petitioners' newspaper were accurate and truthful reports of what had been said at the public hearings before the city council.[6] In this sense, therefore, it cannot even

---

[4] See also Note: The Scope of First Amendment Protection for Good-Faith Defamatory Error, 75 Yale L. J. 642, 644–645; Pedrick, Freedom of the Press and the Law of Libel: The Modern Revised Translation, 49 Cornell L. Q. 581, 592–593.

[5] Cf. *Pauling* v. *Globe-Democrat Publishing Co.,* 362 F. 2d 188, cert. denied 388 U. S. 909; Kalven, The New York Times Case: A Note on "The Central Meaning of the First Amendment," 1964 Sup. Ct. Rev. 191, 221.

[6] The mayor of the city testified, "Certainly nothing in here that reports the meeting any different from the way it happened. This is pretty much the way it happened. If I would say anything, it is rather conservative in presenting some of the comments."

The reporter who wrote one of the articles testified "[T]he people were really mad and that word 'blackmail' was used not once or twice like in my story, but over and over and over again.

"Q. By who?

"A. By people at the meeting. And I felt if I left that out I really wouldn't be writing a truthful article."

be claimed that the petitioners were guilty of any "departure from the standards of investigtaion and reporting ordinarily adhered to by responsible publishers," *Curtis Publishing Co.* v. *Butts, supra,* at 155 (opinion of HARLAN, J.), much less the knowing use of falsehood or a reckless disregard of whether the statements made were true or false. *New York Times Co.* v. *Sullivan, supra,* at 280.

The contention is, rather, that the speakers at the meeting, in using the word "blackmail," and the petitioners in reporting the use of that word in the newspaper articles, were charging Bresler with the crime of blackmail, and that since the petitioners knew that Bresler had committed no such crime, they could be held liable for the "knowing use of falsehood." It was upon this theory that the case was submitted to the jury, and upon this theory that the judgment was affirmed by the Maryland Court of Appeals. 253 Md. 324, 360–364, 252 A. 2d 755, 775–778. For the reasons that follow, we hold that the imposition of liability on such a basis was constitutionally impermissible—that as a matter of constitutional law, the word "blackmail" in these circumstances was not slander when spoken, and not libel when reported in the Greenbelt News Review.

There can be no question that the public debates at the sessions of the city council regarding Bresler's negotiations with the city were a subject of substantial concern to all who lived in the community. The debates themselves were heated, as debates about controversial issues usually are. During the course of the arguments Bresler's opponents characterized the position he had taken in his negotiations with the city officials as "blackmail." The Greenbelt News Review was performing its wholly legitimate function as a community newspaper when it published full reports of these public debates in its news columns. If the reports had been truncated or

APPENDIX

On October 14, 1965, the following story appeared in the Greenbelt News Review:

SCHOOL SITE STIRS UP COUNCIL REZONING DEAL OFFER DEBATED

By Dorothy Sucher

Delay in construction of a new Greenbelt high school is the lever by which a local developer is pressuring the city to endorse his bid for higher density rezoning of two large tracts of land; so citizens heard at a well-attended special meeting of the City Council on Monday night, Oct. 11.

For the past nine months, the Board of Education has been trying to acquire land owned by Consolidated Syndicates, Inc. (Charles Bresler-Theodore Lerner), for a high school site. The landowners, developers of Charlestowne Village, also own other tracts of undeveloped land in Greenbelt.

The developer has refused to accept the Board of Education's price, and condemnation proceedings have already been delayed three times . . . . Originally, it was hoped the new school would open September 1966.

Some time ago, it became known that the developer would agree on the price, provided the city would help him obtain higher density rezoning for two of his tracts (Parcels 1 and 2, totaling 230 acres) near the center of Greenbelt. If the city refused, he threatened to delay the school site acquisition as long as possible through the courts.

This "deal" as it was termed by several citizens at Monday's meeting, has been rumored for months, but

only became public knowledge recently. It was categorically opposed by Nathan Shinderman, a Board member of Greenbelt Homes, Inc. (GHI), who read a lengthy statement by GHI president Charles Schwan . . . .

Blackmail

"It seems that this is a slight case of blackmail," commented Mrs. Majorie Bergemann on Monday night, and the word was echoed by many speakers from the audience.

Councilman David Champion, however, denied that it was "blackmail," explaining that he would rather "refer to it (i. e., the negotiations—Ed.) as a two-way street."

Speaking from the floor, Gerald Gough, commented: "Everyone knows there's a need for a school—just walk through the halls of High Point. The developer knows there's a need and says, 'we'll meet your need if you meet our need.' In my opinion, it's highly unethical."

. . . . . .

Delay Probable

Mayor Edgar Smith remarked that it should be made clear that refusing the developer's terms did not necessarily mean the loss of the school site; that it would, however, probably mean a two or three year delay in the construction of the school.

. . . . . .

Among the parents who spoke was Mrs. Joseph Rosetti, who said: "I have several children going into high school, but I would rather adhere to the Greenbelt Master Plan than overcrowd the town with dense development. I would stand for my children's discomfort, rather than give in to a blackmailing scheme."

The following week, the News Review carried the sequel to its earlier story:

COUNCIL REJECTS BY 4–1
HIGH SCHOOL SITE DEAL

By Mary Lou Williamson

More than 150 citizens came to hear how the new City Council would respond to pressure by a local developer for higher density zoning on a large tract of land in exchange for uncontested consummation of the sale of a Greenbelt senior high school site to the Board of Education at the Council meeting Monday night.

Council sat quietly listening for more than an hour to citizen statements before voting to reject the proposal (4–1) with Councilman Dave Champion dissenting.

. . . . . .

Citizens Speak

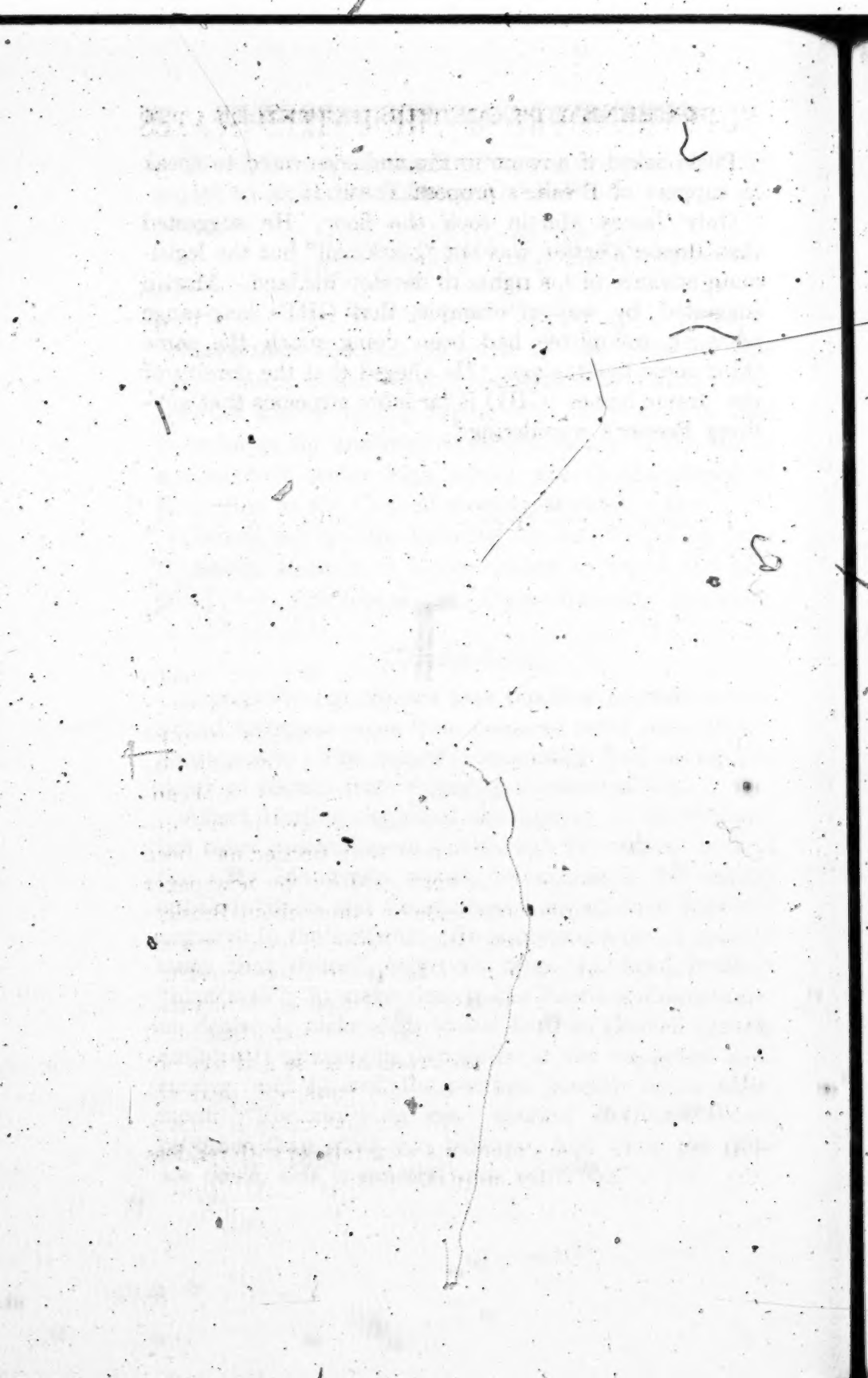
A procession of citizens took the floor to make impassioned speeches—some from prepared texts, some extemporaneously. The mayor occasionally had to caution them to refrain from engaging in personalities.

Albert Herling suggested skulduggery in the September court postponement. Although he praised most of the City Manager's report, he criticized the section entitled "Risks and Conclusions," saying they appeared negative in the extreme. He suggested a list of positive steps that council ought to take: 1) fight Bresler's "blackmail"; 2) make clear to the Board of Education—no deals; 3) make clear to the District Council (zoning authority) unanimous opposition to the requested R–30 zoning; and 4) seek the swiftest possible court settlement. "For anything less," charged Herling, "Would be other than what you believe. And when the chips are down, this is exactly what you'll do."

. . . . . .

Pilski asked if anyone in the audience cared to speak in support of Bresler's proposal.

Only James Martin took the floor. He suggested that Bresler's action was not "blackmail" but the legitimate advance of his rights to develop his land. Martin suggested, by way of example, that GHI's long-range planning committee had been doing much the same thing some months ago. He alleged that the density of the "frame homes (GHI) is far more atrocious that anything Bresler's considering."



SUPREME COURT OF THE UNITED STATES

No. 413.—October Term, 1969

Greenbelt Cooperative Publishing Association, Inc., et al., Petitioners, *v.* Charles S. Bresler.	On Writ of Certiorari to the Court of Appeals of Maryland.

[May 18, 1970]

Mr. Justice White, concurring.

I concur in the judgment of reversal and join the opinion of the Court insofar as it rests reversal on the erroneous definition of malice contained in the instructions given to the jury. I do not, however, join the remainder of the Court's opinion.

Respondent Bresler charged that he had been libeled by at least four statements published in petitioner's newspapers: (1) a statement that Bresler's conduct amounted to "a slight case of blackmail," accompanied by the use of the word "blackmail" as a column subheading; (2) a charge that Bresler had engaged in an "unethical trade"; (3) an allegation that Bresler had been guilty of "skulduggery," a word used by the newspaper to characterize statements made by others about Bresler; and (4) a statement that Bresler had had legal proceedings "started against him for failure to make construction corrections in accordance with county standards." Petitioner contended that the use of the word blackmail had not been intended in the criminal sense and was not libelous and that in any event the newspaper had not made its publications with malice, that is, with knowledge that any of the statements were false or with reckless disregard of the falsity of any of them.

In instructing the jury the trial court defined libel as:

> "the publication of words, pictures or symbols which imputes to a person a crime or a disgraceful or dishonest or immoral conduct or is otherwise injurious to the private character or credit of the person in the minds of a considerable and respectable class in the community . . .
>
> "[T]he burden is upon the plaintiff to establish by a preponderance of the evidence that the publication imputed to him a crime, or disgraceful, dishonest or immoral conduct or was otherwise injurious to his private character or credit . . . ." App., at E. 189.

With respect to the dispute over the sense with which the charge of blackmail had been used the court told the jury:

> "if you are unable to conclude from the preponderance of the evidence that the publication bears a meaning ascribed to it by the plaintiff, or if you find that the evidence is equally balanced on that issue, then your verdict must be for the defendant. . . .
>
> "In considering the publication complained of, you must consider the publication as a whole—the Court would say in this case we are talking about serious, [*sic*] number of publications—and determine the meaning of the publication and how it would be understood by ordinary readers from the entire context thereof with the other facts and circumstances shown by the evidence.
>
> "Where a publication is susceptible of two meanings one of those which would be libelous and the other not, it is up to you to say which of the two meanings would be attributable to it, by those to whom it is addressed or by whom it may be read.

> In reaching your decision you can consider all the circumstances surrounding the publication, which includes all of the evidence which has been admitted." *Id.*, at E. 189–190.

The court also defined the crime of blackmail and told the jury that in this sense the defendant newspaper did not claim that the allegations were true.

Petitioner took exception to none of the foregoing instructions although in its motion for judgment n. o. v. or for a new trial, error was claimed in not instructing the jury that the failure to plead truth meant only that the defendants did not adopt the meaning of the words alleged by the plaintiff. See App., at E. 10–11.

The jury returned a verdict for plaintiff, and judgment was entered on the verdict for both compensatory and punitive damages.

The Court of Appeals of Maryland affirmed. The court held that aside from federal constitutional protections urged by petitioner, the jury's verdict and subsequent judgment thereon were supported by the evidence. With respect to the blackmail charge the court said:

> "In the instant case the word 'blackmail' was used as a sub-heading without qualification. The charge of blackmail was stated in the News Review issue of October 14, 1965, and was again repeated in the next week in the issue of October 21. The appellants argue that the word 'blackmail' was used in a noncriminal sense, but the intended meaning was for the jury to determine. *American Stores* v. *Byrd, supra.* The jury found against the appellants.
>
> . . . . . .
>
> "The charging of Mr. Bresler with having committed blackmail could be found by the jury (as it was) to charge him with the commission of a crime." 253 Md. 324, 351–352, 252 A. 2d 755, 770 (1969).

The court also dealt with the other publications:

> "In addition to the publications that Mr. Bresler had committed blackmail, there were publications that he had engaged in 'an unethical trade,' had been guilty of 'skulduggery,' had legal proceedings 'started against him for failure to make construction corrections in accordance with county standards.' These allegations were injurious to Mr. Bresler in his business as a contractor and were libelous *per se*." *Id.*, at 354, 252 A. 2d, at 772.

As for the issue of malice, the Court of Appeals noted that the newspaper knew the blackmail charge was false in the criminal sense. With reference to the charge of "skulduggery" the court pointed out that the newspaper had not quoted another source in using that word; rather, it was the publishers' own characterization of the events.

> "There is little doubt that the word 'skulduggery' was intended to indicate dishonest conduct on the part of Bresler and to hold him up to ridicule and contempt. . . . The jury could properly conclude that the reports of the hearing were not accurately reported and were, also, published with a knowledge of their falsity or with serious doubt of their truthfulness." *Id.*, at 360, 252 A. 2d, at 775.

The court also held that the allegations that homeowners had started legal proceedings against Bresler in regard to construction defects in their homes built by him had been made with reckless disregard for the truth.

In reversing the Maryland Court of Appeals, the Court does not deny that the Constitution would permit recovery for charging the crime of blackmail, or even for falsely accusing one of "blackmail" in a noncriminal, but derogatory sense "injurious to the private character or credit of the person." The Court does not deny that the jury was told it had the authority to decide in what

sense a word was used or understood, nor does the Court question the conclusion of the Court of Appeals that the jury had found that the word had been used and understood in the criminal sense. What the Court does hold on the cold record is that the trial judge, the jury and the Maryland Court of Appeals were quite wrong in concluding that "ordinary readers" could have understood that a crime had been charged. If this conclusion rests on the proposition that there was no evidence to support a judgment that the charge of blackmail would be understood by the average reader to import criminal conduct, I cannot agree. The very fact that the word is conceded to have a double meaning in normal usage, is itself some evidence; and without challenging the reading of the jury's verdict by the Maryland Court of Appeals, I cannot join the majority claim of superior insight with respect to how the word "blackmail" would be understood by the ordinary reader in Greenbelt, Maryland.

Although the Court does not so hold, arguably the newspaper should not be liable if it had no intention of charging a crime and had a good faith, nonreckless belief that it was not doing so. Should *New York Times* v. *Sullivan*, 376 U. S. 254 (1964), be extended to preclude liability for injury to reputation caused by employing words of double meaning, one of which is libelous, whenever the publisher claims in good faith to have intended the innocent meaning? I think not. The *New York Times* case was an effort to effectuate the policies of the First Amendment by recognizing the difficulties of ascertaining the truth of allegations about a public official whom the newspaper is investigating with an eye to publication. Absent protection for the nonreckless publication of "facts" which subsequently prove to be false, the danger is that legitimate news and communication will be suppressed. But it is quite a different thing, not

involving the same danger of self-censorship, to immunize professional communicators from liability for their use of ambiguous language and their failure to guard against the possibility that words known to carry two meanings, one of which imputes commission of a crime, might seriously damage the object of their comment in the eyes of the average reader. I see no reason why the members of a skilled calling should not be held to the standard of their craft and assume the risk of being misunderstood—if they are—by the ordinary reader of their publications. If it is thought that the First Amendment requires more protection for the media in this respect in accurately reporting events and statements occurring at official meetings, it would be preferable directly to carve out a wider privilege for such reporting.

I agree with the Court that there was error in the instructions concerning malice. The error, however, is irrelevant to the "blackmail" phase of this case as I view it: if one assumes that the jury found that the crime of blackmail was charged, "malice" is conceded, since the defendant admittedly knew such a charge was false.

Nevertheless, the jury returned a general verdict; it might have found that the blackmail statement did not impute a crime, but that the other damaging statements published by the newspaper were libelous. Indeed, this is the most likely course for the jury to take if the Court is correct that there was so little reason for basing liability on the blackmail allegation. Given this possibility, the error in the instructions requires reversal of the judgment. *Stromberg* v. *California*, 283 U. S. 359 (1931).

SUPREME COURT OF THE UNITED STATES

No. 413.—October Term, 1969

Greenbelt Cooperative Publishing Association, Inc., et al., Petitioners, *v.* Charles S. Bresler.	On Writ of Certiorari to the Court of Appeals of Maryland.

[May 18, 1970]

Mr. Justice Black, with whom Mr. Justice Douglas joins, concurs in the judgment of the Court for the reasons set out in Mr. Justice Black's concurring opinion in *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 293 (1964), in his concurring and dissenting opinion in *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130, 170 (1967), and in Mr. Justice Douglas' concurring opinion in *Garrison* v. *Louisiana*, 379 U. S. 64, 80 (1964).